IN THE

Supreme Court of the United States

October Term 1975

No. 74-1631

WYN RUMMLER,
Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Court of Appeal of California
Second Appellate District

JURISDICTIONAL STATEMENT

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Appellant appeals from the judgment of the Court of Appeal of California, from which a hearing was denied by the Supreme Court of California on March 26, 1975.

OPINION BELOW

The Opinion of the Court of Appeal is reported in 44 Cal. App. 3d 638. Copies of the Opinion and of the Order by the Supreme Court of California denying a hearing are attached hereto as Appendices A and B.

JURISDICTION

In 1969, as a preliminary to entering the business of facial rejuvenation through the application of caustic solutions (removal of wrinkles through skin peeling) appellant inquired of the Los Angeles County District Attorney's Office, the California Board of Medical Examiners and the Counsel for the California Department of Professional and Vocational Standards as to the legal requirements involved, particularly whether the procedure required a medical license. In response to this inquiry the Board of Medical Examiners issued an administrative Memorandum that the procedure was the practice of cosmetology and required a cosmetologist's license. It based this Memorandum on *People* v. *Penny* (1955) 44 Cal.2d 861, wherein the California Supreme Court held that the procedure was a branch of the art of cosmetology as defined in California Business and Professions Code Section 7321(c). The District Attorney advised appellant that since the procedure was listed under Section 7321 it could only be performed by a person licensed under that section.

The section lists five branches of cosmetology in

addition to the one embracing the face rejuvenation procedure. These branches are unrelated to the procedure and a knowledge of them is unnecessary to its performance. Business and Professions Code Section 7325 states that the practice of one branch of cosmetology without being licensed under Section 7321, which requires proficiency in all six branches, is a misdemeanor. In *Whitcomb* v. *Emerson* (1941) 46 Cal.App. 403 the Court of Appeal held the section to be unConstitutional in requiring a person confining his practice to one branch of cosmetology to meet the licensing requirements of other unrelated branches.

Therefore, appellant inquired of the California Board of Cosmetology if a person who confined his practice to face rejuvenation with caustics needed to be licensed under the section. The Board replied that in its opinion the *Whitcomb* ruling applied only to the particular branch of cosmetology considered in that case, subdivision (b), and that the procedure appellant contemplated required a license under Section 7321.

Copies of appellant's inquiry and of the replies by the District Attorney's Office, the Board of Medical Examiners and the Board of Cosmetology are attached hereto as Appendices C, D, E and F respectively.

After receiving these replies appellant went into partnership with Mrs. Nona Uber, a licensed cosmetologist, and, in 1970, in North Hollywood, Califor-

nia, assisted Mrs. Uber in the performance of face rejuvenation through the application of a solution of phenol and other caustics to a customer, Mrs. Dorothy Fleigel.

The District Attorney's Office then changed its position to a contention that the procedure was the practice of medicine. On that basis it charged appellant with violating Business and Professions Code Section 2141.5 (dangerous unlicensed medical practice). A jury trial was held during which Mrs. Fleigel testified to having undergone substantially the same procedure that is described in the Memorandum from the Board of Medical Examiners, Appendix E. Appellant showed the Memorandum to the Trial Judge, but the Judge refused to allow the jury to see it and, over appellant's objection, instructed the jury that the procedure was the practice of medicine. Appellant was thereby convicted.

While this matter was before the State courts appellant challenged Business and Professions Code Sections 2141.5, 7321 and 7325 as arbitrary and unreasonable in requiring a person who confines his practice to face rejuvenation with caustics to meet the licensing requirements of other and unrelated procedures. He also challenged Business and Professions Code Section 7415 as arbitrary and unreasonable in limiting the use of phenol in a cosmetological procedure to 10 percent, inasmuch as other caustics which it did not forbid to be used in excess of 10 percent had substantially the same effects. Appellant also challenged Business and Professions Code Section 2399 as arbitrary and unreasonable insofar as it could be interpreted to forbid a non-medical face rejuvenator from referring a prospective client to a particular physician for a medical examination. He also challenged Business and Professions Code 653.1 insofar as it could be interpreted to forbid a non-medical face rejuvenator to inform the prospective client of the price of such examination. Appellant based these challenges on the ground that said sections are repugnant to the United States Constitution, First, Fifth, Ninth and Fourteenth Amendments. The Court of Appeal considered these challenges and rejected them.

The prosecution's evidence at the trial included materials seized by search warrant from the premises where the face rejuvenation procedure was performed, including caustics, other cosmetological equipment, non-prescription drugs and some jewelry. Prior to the trial appellant moved the Superior Court under California Penal Code Section 1538.5 to have all evidence seized under the search warrant suppressed and returned, basing his motion on the United States Constitution, Fourth Amendment. The motion was denied, and the denial upheld by the Court of Appeal.

The jurisdiction of this Court to review the decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2), which provides that a final judgment of the highest court of a state in which a decision may be had may be reviewed by the Su-

preme Court by appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity.

Appellant has not chronicled the challenges on Constitutional grounds that he presented at the Trial Court level of the Business and Professions Code Sections enumerated above, inasmuch as the Court of Appeal, by ruling on these issues, has eliminated the necessity of showing that they were timely raised. "Where the highest state court assumes or holds that a federal question is properly before it and then proceeds to consider and dispose of that issue, the Supreme Court's concern with the proper raising of that issue in the state courts disappears." Stern and Gressman's *Supreme Court Practice,* Fourth Edition, Section 3.28.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case; *Lathrop* v. *Donohue* 367 U.S. 820; *Largent* v. *Texas* 318 U.S. 418; *Lawrence* v. *State Tax Commission* 286 U.S. 276, 282-3; *Whitney* v. *California* 274 U.S. 357, 360-1; *Manhattan Life Ins. Co.* v. *Cohen* 234 U.S. 123, 134; *Coleman* v. *Alabama* 377 U.S. 129, 133.

Under 28 U.S.C. Section 2103 this Court also has jurisdiction to examine this case by certiorari because of the following facts:

When the charges were brought appellant was known to the District Attorney's Office as experienced and skilled in legal procedure. On June 11, 1972, shortly after the inception of the proceedings, he was granted status to act in propria persona per hearing before Municipal Court Judge Howard C. Thelin. On June 10, 1972, purely as an adversary measure, the District Attorney's Office prevailed on Municipal Court Judge Edward L. Davenport to withdraw said status and order appellant to hire an attorney. When appellant failed to do so Municipal Court Judge James Di Giuseppe treated this as contempt and jailed appellant for three days. The contempt order No. 5978 concealed the real reason for the jailing and falsely alleged that appellant had behaved loudly and vulgarly in court. Appellant applied to the Court of Appeal per Petition for a Writ of Prohibition and/or in the Alternative Mandate and/or Certiotari No. 2nd CIV 41246 for restoration of his status to act in propria persona, vacation of the contempt order and damages pursuant to Code of Civil Procedure Section 1090 in the amount of five million dollars. The Court of Appeal ordered that appellant was entitled to no relief other than another hearing on his qualifications to represent himself. A timely petition by appellant to the California Supreme Court was summarily denied, but appellant's status to represent himself was restored by Municipal Court Judge Harold Sinclair. The Opinion treats the withdrawal of appellant's pro se status as though appellant were complaining of the Superior Court Calendar Judge, the Honorable Wil-

liam H. Rosenthal, who in fact had nothing to do with it and who was courteous and considerate of appellant's rights. Thus the Opinion is libelous of appellant as though he accused judges wantonly.

The medical charge was accompanied by a charge of violating Penal Code Section 487, subdivision 1 (grand theft). This was on the theory that appellant had obtained the fee for the rejuvenation service by fraudulent means and/or that he had embezzled said jewelry, which allegedly had been deposited with him by Mrs. Fleigel for safekeeping only. Appellant's defense to the embezzlement aspect was that the jewelry had been deposited as security for a balance of $370 due on the fee. Appellant was acquitted by jury of all theories of the theft charge, but, although the balance has not beer aid, after the verdict the Court refused to return the jewelry to appellant and released it to Mrs. Fleigel.

At the time these charges were originally brought appellant was defense investigator in the case of People of the State of California vs. Marcus Morales Calderon and Alex Diaz No. A-259427. In that capacity he had uncovered evidence of subornation of perjury by the then District Attorney, Evelle Younger. Considerable evidence indicates that Mrs. Fleigel was an agent or pawn of the District Attorney in an attempt to frame appellant, so that the evidence he had uncovered in the Calderon prosecution would be discredited.

In a petition to the Superior Court for a Writ of Habeas Corpus No. 171880 appellant sought an inquiry into this evidence. The petition was summarily denied on August 28, 1972, after which the petition and all records of it were apparently removed from the Clerk's files. Appellant again sought such inquiry in an amendment to his Petition for a Writ of Prohibition and/or in the Alternative Mandate and/or Certiorari No. 2nd CIV 41236. Two weeks after accepting it for filing the Court of Appeal returned the amendment with an order stating permission to file it was denied. The California Supreme Court summarily denied a petition from this order.

QUESTIONS PRESENTED

Can the State, as a condition for the issuance of a professional license, require the licensee to have skills which have no relation to the profession? Where the safe performance of a service requires that the person receiving it be physically fit, can the State prohibit a non-medical person from requiring, as a condition for contracting to perform such service, that the prospective client obtain a medical clearance from a particular physician? Can the State prohibit the prospective contractor from informing the prospective client, in such context, the fee the physician would charge for such examination? Is California Business and Professions Code arbitrary and unreasonable in prohibiting the application in a cosmetological procedure of a solution of phenol of more than 10 percent?

Can the State, having advised a person that the performance of a service does not require a particular license, prosecute the person for performing the service without such license? Does a criminal defendant have an unqualified Constitutional right to act in propria persona?

STATUTES INVOLVED

California Business and Professions Code:

Section 2141.5 Any person who willfully, under circumstances which cause or create risk of great bodily harm, serious mental or physical illness, or death, practices or attempts to practice, or advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or diagnoses, treats, operates for or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision of law, is punishable by imprisonment in the county jail for not exceeding 1 year or in the state prison for not less than 1 year nor more than 10 years. The remedy provided by this section shall not preclude any other remedy provided by law.

Section 7321 The art of cosmetology includes any and all and any combination of the following practices: (a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautfying or otherwise treating by any means the hair of any person. (b) Massaging, cleaning or stimulating the scalp, face, arms, bust or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions or creams. (c) Beautifying the face, neck, arms, bust or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions or creams. (d) Removing superfluous hair from the body of any person by the use of electrolysis or by the use of depilatories or by the use of tweezers, chemicals, preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays. (e) Cutting, trimming, polishing, tinting, coloring, cleansing or manicuring the nails of any person. (f) Massaging, cleansing, treating or beautifying the hands of any person.

Section 7325 Except as provided in Sections 7322, 7323 and 7324, every person who engages in, or attempts to engage in, the practice of cosmetology or any branch thereof without a valid, unexpired license therefor, issued by the board or in an establishment other than one licensed by the board is guilty of a misdemeanor.

Section 7415 Any licensee who uses any X-ray appliance, apparatus or machine in the treatment of any human being or with the intent to remove superfluous hair from the face or body of any human being, or who applies to any human being a solution of phenol greater than ten percent, or corrosive sublimate (mercury) or any of its preparations, derivatives, or compounds in a solution greater than one in five hundred, is guilty of a misdemeanor punishable by a fine of not less than twenty-five nor more than two-hundred fifty dollars, or by imprisonment in the county jail for a term not less than fifty nor more than one hundred eighty days, or by both such fine and imprisonment.

Section 2399 The employment of "cappers" or "steerers" or other persons in procuring practice for a practitioner of a system or mode of treating the sick or afflicted provided for in this chapter constitutes unprofessional conduct within the meaning of this chapter.

Section 653.1 (a) No person, whether or not licensed under this division, shall advertise or cause or permit to be advertised, any representation in any form which may in any manner, whether directly or indirectly, refer to the cost, price, charge, or fee to be paid for any commodity or commodities to be furnished or any service or services performed by any person licensed as a physician and surgeon, optometrist, pharmacist, or registered dispensing optician, when those commodities are furnished in connection

with the professional practice or business for which he is licensed; provided, however, that the provisions of this section do not apply to the furnishing of information regarding benefits available and charges therefor, under the coverage of any hospital or medical service or health care service or insurance plan. . . .

These sections are contained in West's Annotated Codes.

STATEMENT

In the jury's absence appellant's inquiry to the District Attorney's Office, Appendix C, was read by the Trial Judge. The Judge also read the replies from that Office and the other agencies attached hereto as Appendices D, E and F. (Reporter's Transcript, page 758, line 7 to page 759, line 10) Appellant's inquiry of the District Attorney's Office states that the solution applied in the face rejuvenation procedure "dissolves the two top layers of the epidermis," and asks whether, "in going below the surface of the skin," this comes within the requirement "that one have a medical certificate before 'penetrating the tissues of human beings.'" Obviously, this would require a powerful caustic, and it is also obvious from the Memorandum of the Board of Medical Examiners, Appendix E, entitled "Inquiry of Wyn Rummler re Face Rejuvenation," that appellant had described a procedure that would be arduous for the person receiving it. The Memorandum states that appellant proposed that the procedure be preceded by medically injected

sedation, a fact which indicates that the caustic solution would be strong enough to be painful. The Memorandum states that following the application the face would be bandaged for 48 hours, and that after the bandages were removed the client would recuperate for nine days in facilities operated by the cosmetologist, during which time antiseptic powders would be applied to the client's face.

The following testimony by Mrs. Fleigel shows that Mrs. Uber administered to her substantially the same procedure described in the Memorandum, except that it was not preceded by injected sedation.

> Q (BY THE DISTRICT ATTORNEY), And as you placed yourself on this table, who was present?
>
> A Mr. Rummler and Nona.
>
> Q Now, what happened?
>
> A Well, Nona was putting stuff on my face. And the minute she touched me, it burned so bad.
>
> . . .
>
> Q Now, was any bandage or anything in the nature of covering applied to your face . . . ?
>
> A . . . they put adhesive tape on my face.
>
> . . .
>
> Q Was any opening left for your mouth?
>
> A Yes, They just a little slit here. And a little slit for the eyes.
>
> . . .

> Q How long did you remain in the room that you were taken to?
>
> A Well, eleven days.
>
> Q Did you see Mr. Rummler during any part of these eleven days?
>
> A Oh, every day he was there applying different medications on my face. . . And he was there when she yanked the adhesive tape off my face. (Reporter's Transcript, page 362, line 19 to page 365, line 3)

A witness for the People, Dr. Richard Aronsohn, was asked by the District Attorney to evaluate the solution Mrs. Uber testified was applied to Mrs. Fleigel. His Opinion was as follows:

> Q Suppose I were to hypothesize to you a corrosive formula utilized in a face altering procedure comprised as follows: One part phenol, three and a half parts resorcinol, one and a half parts of salicylic acid and four parts of alcohol. . . . Would that have an effect of corroding the skin?
>
> A Yes.
>
> Q Now, in that particular solution, Doctor, in the application of such a solution in lay hands, that is, not in a medical doctor's hands, does there exist any danger to the patient?
>
> Q There's danger whenever you put a corrosive formula on the patient's skin. But, the person who used that formula was quite astute because he didn't use water, which would make it

much more dangerous. And it was more resorcinol than phenol. So, it is buffered. It's not diluted, it's cut. It's buffered. And you're less apt to get a cardiovascular problem. But, you would get scarring. (sic, *could* get scarring) Every patient reacts differently to this process. And no matter how good you are, the healing process lends its own personal touch to this work. You really can't predict what's going to happen to this patient even in the safest hands. (Reporter's Transcript, page 417, line 28 to page 418, line 16)

Mrs. Fleigel testified that before undergoing the procedure she signed a contract. A copy of the contract (Clerk's Transcript Augmentation, page 7) is attached hereto as Appendix G. In addition to requiring the client to provide proof of a medical clearance, it contains the following language:

"Important (Client will please read carefully) This treatment causes the growth of new skin through application to the face of a solution which dissolves the existing epidermis. The dissolvent contains chemicals which can be poisonous if used under improper conditions. This treatment can be dangerous for anyone whose health is poor, particularly for anyone who has cardiac, diabetic, kidney or nervous problems, or who uses narcotics. Persons with allergies, or with abnormal skin, particularly persons with keloid tendencies, can be scarred or otherwise harmed by this treatment. (One indication of keloid tendencies is excessive or unusual scar-

ring from minor cuts.) Nona's Youth Fount does not undertake medical diagnosis of any kind, and with respect to the above listed hazards this treatment is undertaken at the client's own risk.

In *People* v. *Penny* (1955) 44 Cal.2d 861, 864, the formula the defendant testified to using also combined resorcinol with phenol. Its proportion of resorcinol was a heaping tablespoon to one ounce of water, that is, much in excess of 10 percent. However, instead of being buffered with alcohol, which would have minimized the possibility of systemic absorption, it was diluted in water, which maximized the danger of systeme absorption. This could account for the fact that the client died during the procedure. In *Penny,* as the Court stated on page 864, the purpose of the procedure was "to remove wrinkles and pock marks," an effect which obviously would require a corrosive sufficiently strong to produce a peel as deep as pock marks. The Opinion notes that the California Supreme Court stated in *Penny* "that, as a matter of law, defendant was engaged in the practice of cosmetology." The California Supreme Court found a violation of the law, not in the use in the solution of resorcinol in excess of 10 percent, but in the fact that the solution was proved to have also contained more than 10 percent of phenol.

This agrees with Section 7415, which names two caustics that a cosmetologist is not to use in more than certain percentages. One is phenol. The other is cor-

rosive sublimate. The restrictions on corrosive sublimate include "any of its preparation, derivatives or compounds," No such language accompanies the restriction on phenol. Similarly, Section 7321 (d), in authorizing a cosmetologist to remove superfluous hair by means of "chemicals," necessarily contemplates a caustic solution of more than 10 percent.

In sum, the record before the Trial Judge showed that appellant had inquired of the State as to the legal requirements of the service he proposed to market, that he was advised by the State as to what those requirements were, that he then provided the service after informing the client what the service would consist of and that it entailed some hazards.

The only difference the Opinion cites between appellant's case and that of *People* v. *Penny* (1955) 44 Cal.2d 861 *supra* is not in the procedure performed but in the fact that defendant Penny was charged with an offense resulting from the application of a solution of phenol of more than 10 percent whereas "defendant Rummler was not charged with using phenol in solution stronger than 10 percent."

What is the crime?

In the jury's absence the trial judge stated that the issue to be tried was whether appellant had gone beyond the advice contained in the Memorandum from the Board of Medical Examiners and the other authorities. (Reporter's Transcript, page 758, line 7 to page 759, line 1) In that case he should have been willing to have the jury see this advice in order to pinpoint

the issue of the offense. On the contrary, the judge refused to permit the jury to see those communications. (Reporter's Transcript, page 903, line 7 to page 904, line 11)

In the jury's absence the judge stated that face rejuvenation with a solution of 10 percent of phenol "may or may not be" the practice of cosmetology "depending on what, if anything, is added" to the solution. Even with this qualification he refused to so instruct the jury. (Reporter's Transcript, page 1019, line 16 to page 1020 line 25) A copy of the requested instruction with the Trial Judge's comment thereon is attached hereto as Appendix H.

Prior to the formal instructions the judge told the jury over appellant's objection that "case law," which he did not identify but which he said was "in the annotations of the Code sections," had interpreted the prohibition of the use of phenol in excess of 10 percent to include "other products which are phenolic in their nature." He told the jury this case law was on the reasoning that "Just as, for example, if the law were that you could give someone a compound containing fifty percent aspirin, it doesn't matter whether it's fifty percent Bayer and another twenty percent Anacin. They are similar products." (Reporter's Transcript, page 670, lines 1-14)

There is no such case law "in the annotations of the Code sections" or anywhere else.

The judge further instructed the jury that while a cosmetologist "is authorized to apply to a human being a solution which has 10 percent or less of phenol as its only ingredient which both penetrates and alters human tissues," the addition to that solution of any other caustic made its application the practice of medicine.

Obviously this left the jury no choice but to convict, but it has no basis in law.

The following matters are presented to this Court under its jurisdiction to treat this appeal alternatively as a petition for a writ of certiorari:

The history of the criminal charge indicates an intent by the District Attorney's Office and the Attorney General's Office to convict appellant through trial in absentia of a charge the prosecution was afraid to submit to a jury, a charge that a solution of more than 10 percent of phenol had been applied to Mrs. Fleigel. Said history also indicates perpetration by said Offices of a hoax to the effect that Mrs. Fleigel's skin had been damaged by the procedure, a hoax carried out in full awareness that the procedure had in fact beautifully improved Mrs. Fleigel's complexion.

The charges were first brought against Nona Uber only, under No. A-115628, in December 1970. Reports incorporated into the complaint described appellant as her accomplice identifiably without actually naming him. They alleged that a solution of phenol of over 50 percent had been applied to Mrs. Fleigel, and that

this had caused permanent depigmentation of her forehead near the hairline, drooping lower eyelids and a rope-like verticle scar on her throat. Mrs. Fleigel had these conditions prior to the procedure, and she so testified at the trial. They are shown in a "before" photo of Mrs. Fleigel attached as Appendix I along with pages 457, 458 and 459 of the Reporter's Transcript in which she identifies the photo and gives the said testimony.[1]

The charges were dismissed in March, 1971, supposedly because Mrs. Fleigel had become unavailable. In May, 1972, appellant, as co-owner of the property seized under the search warrant, joined Mrs. Uber in a motion for its return. Deputy District Attorney Roy Carstairs told the Court that he would not oppose return of the property if Mrs. Uber would stipulate to probable cause. Mrs. Uber refused, and the charges were refiled, this time naming appellant as co-defendant. Due to procedural complications caused by the withdrawal of appellant's status to act in propria persona, the defendants' cases were severed and they were tried separately. The grand theft charge against Mrs. Uber was dismissed at her preliminary hearing and the charge of hazardous unlicensed medical practice was dismissed in the Superior Court and Mrs. Uber's bail exonerated when she demurred to the charge on the ground that face rejuvenation with phenol was authorized under her cosmetology license. About a

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[1]The investigator had not seen the picture at the time of the original complaint.

month later, on February 23, 1973, the same Court "reinstated" the charge and in April, 1973, Mrs. Uber was convicted of it through the same jury instruction given in appellant's case, i.e., that the application of any caustic solution strong enough for face rejuvenation was hazardous medical practice even if the phenol in the solution did not exceed 10 percent. Mrs. Uber appealed to the Court of Appeal under No. 2nd CRIM 24688, but the Court returned her Opening Brief on the ground that a technicality made it unacceptable. The Court then sent her a notice that the appeal would be dismissed unless an Opening Brief had been filed. Mrs. Uber threw up her hands. Thereafter the Court "reinstated" the appeal, saying that it had been mistaken about the technicality. Accordingly, the Court had a copy of Mrs. Uber's Opening Brief made from the one she had served on the Attorney General, filed it in her behalf and scheduled a hearing. Mrs. Uber received no notice of any of this since, having been notified by the Court that her appeal was being dismissed, she had not informed the Court of her current address. The Court then filed an unpublished decision affirming the judgment. One of the arguments that Opinion uses in rejecting the applicability of *People* v. *Penny* (1965) 44 Cal.2d 861 is that "Nothing in *Penny* suggests that the defendant intended or attempted to remove a layer of skin from a substantial area of the patient's person by the use of corrosive and caustic acid (i.e., burning it off)." That is, although defendant Penny applied enough carbolic acid

to kill the client she did not think it would peel the skin. The other arguments in the Opinion are equally illogical. For nearly four years after the initial arrest Mrs. Uber continued to practice cosmetology at the address where the face rejuvenation procedure had been performed. The Department of Consumer Affairs, like the District Attorney's Office, was aware of this and offered no objection. Late in 1974 Mrs. Uber, then 72 years old, retired from her cosmetology practice, sold the property on which the cosmetological establishment had been located, and moved permanently to Oklahoma. On learning of this the State Attorney General's Office prevailed on the Board of Cosmetology to file Accusation No. 1682 to revoke Mrs. Uber's right to renew her license on the claim that she had applied a solution of phenol of more than 10 percent to Mrs. Fleigel. The face rejuvenation procedure had been performed under Cosmetological Establishment License No. A-79638, issued to appellant, and Cosmetologist License No. A-80213, issued to Mrs. Uber. Mrs. Uber was unable to return to California to defend against the Accusation, but appellant wrote to the Board of Cosmetology and requested that, inasmuch as the procedure had been performed under his cosmetological establishment license and since the Accusation referred to him, the Accusation be amended to name him as corespondent, so that he would have status to appear and defend against the charge of applying phenol in excess of 10 percent. The Board ignored appellant's request and held a default hearing.

The Accusation, which was prepared by the State Attorney General's Office, repeated the statements in the criminal complaint to the effect that Mrs. Fleigel had been disfigured by the procedure. Prior to the default hearing appellant sent the Attorney General, the Board of Cosmetology and the Department of Consumer Affairs copies of the "before" photo of Mrs. Fleigel and the page and line numbers in the Reporter's Transcript where Mrs. Fleigel admitted that she had these disfigurements before the procedure (page 457, lines 8-25). Nevertheless, the Attorney General, in the person of Dora Levin, Deputy, represented to the Hearing Officer that these conditions had been caused by the procedure.

Mrs. Fleigel testified at the trial that "before" and "after" pictures that Mrs. Uber had shown her of other persons who had undergone the procedure indicated little improvement. Although these pictures had been seized under the search warrant the Court would not allow them to be shown to the jury. Copies of these pictures are attached as Appendices J and K. The photos shown in Appendix K are of appellant. (The "before" photo of appellant is not the same one seized under the search warrant but the one that was seized showed a similar contrast to the "after" photo.) At the trial Mrs. Fleigel's facial appearance showed so much improvement over her "before" photo that an observer remarked that she ought to put appellant in her will.

The opinion states falsely in footnote 5 that Mrs. Uber testified to the effect that the solution she applied contained phenol in a proportion of one in nine, which would be a violation of Section 7415. Her actual testimony (Reporter's Transcript, page 586, line 28 to page 587, line 8) was that she applied it in a proportion of one in 10, as permitted by the section. The Opinion also states falsely that at the trial appellant neglected to object that a phenolic compound was not the same as phenol. On the contrary, appellant made this objection repeatedly and vigorously. (Reporter's Transcript, page 760, line 20 to page 761, line 6, for example) Still another false statement in the Opinion is that at some mysterious point in the trial after the Court sustained an objection to his testimony, "defendant ignored the Court's ruling and kept right on with his answer." Nothing like that is to be found in the Reporter's Transcript. The Opinion also implies that appellant had conceded he was guilty under Section 7415 and had tried to use this as a shield against Section 2141.5. Appellant had done nothing of the kind. In a petition for rehearing (Clerk's Transcript) appellant requested correction of the falsehoods but to no avail.

Said falsehoods in the Opinion, the libelous statements in the contempt order and the calumnies in the Accusation against Mrs. Uber are part of a conspiracy to make appellant appear to be lawless, deficient in reasonableness and self-possession, lacking in courtroom presence of mind and suavity and a sham as a

face rejuvenator. The attempt to convict appellant of the embezzlement aspect of the grand theft charge is part of this conspiracy, and stems from the following facts:

At the time the within charges were originally brought appellant was acting as defense investigator in the case of People of the State of California vs. Marcus Morales Calderon and Alex Diaz No. A-259427. In this capacity he had uncovered evidence of the subornation of perjury by the District Attorney, at that time Evelle J. Younger, and had so informed the District Attorney's Office. Defendant Calderon, a certificated teacher with the El Monte School District of Los Angeles County, and defendant Diaz were acquitted by jury of all charges. Following the acquittal Mr. Calderon's school district instituted two similtaneous civil actions against him, one to dismiss him immediately, No. NEC 10832, the other to not reemploy him for the following year, No. 26018. In conjunction therewith the Committee of credentials instituted an action No. 029 to revoke his credential. All of these proceedings were on the ground that the acquitted charge was true and in all of them findings to that effect were entered. The teacher dismissal findings were upheld by the Court of Appeal under Nos. 2nd CIV 40727 and 41520 and allowed to stand by this Court under Nos. 73-1615 and 74-133. (The credential revocation decision was held in abeyance until March 28, 1975, and an appeal is in process.)

In the course of the teacher dismissal proceedings appellant discovered evidence that their actual purpose was to discredit, by means of rigged findings in contradiction of the acquittal, the evidence of perjury of which appellant had informed the District Attorney's Office during the criminal prosecution.

At the time of the criminal prosecution appellant had been gathering evidence of an internal attack on the United States. Some of this evidence is contained in a Statement of Objection to (California) Supreme Court Justices for Cause filed by appellant in this proceeding on February 19, 1975, and identified herein by a copy of a letter from the Clerk of that Court attached as Appendix L. Portions of the Statement are quoted below:

> "Said Justices are instruments of persons who over an extended period of years have been gradually executing a long range internal attack on the United States modeled after the Nazi takeover in Germany. This attack is based in California, but it has highly placed agents in the Federal Government. . . ."
>
> "Its initial stages have involved gradually and secretly changing the Constitution and statutes to roll back the rights of the individual versus the state to what they were before the Magna Carta. The right of a person charged with a criminal offense to be tried by twelve jurors, the necessity of a unanimous verdict in order to convict, the right of a criminal defendant to control his own defense, the right to

be secure against exploratory search, the right to extraordinary writs and so on are to be gradually and quietly eliminated."

"Since the public would never knowingly consent to this, the operation is being carried out through secrecy and trickery. Its technique is typified by the following:"

"Legislative conspirators privy to the scheme enact a statute which on the surface seems intended to protect individual rights but which contains a hidden meaning having a contrary purpose. Later, some official agency applies the statute against a private citizen in accordance with its hidden meaning. If the private citizen resists the interpretation in court and the litigation reaches an appellate level, the appellate court upholds the official agency's interpretation. Thereby a rule is created which, while unConstitutional, has all the force of a legislatively enacted statute."

"This has been going on for a considerable number of years, here a little and there a little, without publicity, until a large body of virtually secret "case law" has been created that denies basic rights and dignity to the individual."

"Other California officials who are privy to this scheme include the Attorney General, Evelle J. Younger, and each of the Justices of the Court of Appeal for the Second District, with the exception of Justice Rodney K. Potter, whose intentions are unknown to me, as are those of Supreme Court Justice Frank K. Richardson."

"Among the prime movers are the owners of the Los Angeles Times, the owners of the Los Angeles Herald Examiner and the owners of each of the major television stations in the Los Angeles area."

"The owners of the press facilities assist the conspiracy by concealing it from the public and doctoring any news reports that might lead to public awareness of it."

"One of the most insidious dangers of the plan is that, having been conceived by minds on a level with G. Gordon Liddy, it sounds too far fetched to be believable. Another problem in proving its existence is that, because of the ceremonial respect most judges receive, the conspirators have been able to conceal their plan under a fairly plausible facade of 'professionalism.'"

"I, like others of similar perceptivity, am engaged in activities that within the next one or two years will make the public aware, despite the machinations of the press, that the United States is under internal attack. This will result in a confrontation in which the United States, as usual, will win."

"Thereafter my intentions are that the attackers will be tried in proceedings analogous to the Nuremberg war crimes trials. I expect to assist the prosecutors in these proceedings with the view that the attackers will receive the traditional penalty for treason."

"My plans are at that time to convince the public and the judiciary that an extraordinary

legal situation exists under which extraordinary judicial dispositions will be appropriate. Such dispositions are to be on the basis that the property of any person or group shown to have conspired against the United States, be such property industrial, agricultural or a media for the dissemination of news, shall be subject to confiscation for distribution among a few of the more zealous defenders of the Constitution."

"At first my plans in this matter may sound too fanciful and vaulting to be taken seriously by the uninitiated. Therefore, as a means of demonstrating that I know what I am doing and that my plans are realistic, I precipitated the above charges against me. My strategy in this case has been to obtain a record for presentation to law enforcement agencies that would show me to be skilled in matching legal wits, not only with respect to the statutory laws, but also in utilizing the unwritten and psychological laws."

"The crucial factor in winning such contests is psychological advantage, and in developing such advantage for myself it was important to demonstrate that I had the motivation and insight to provide it for policemen. When the time came to prosecute the conspirators against the United States I intended to use this record to convince prosecutors in the U.S. Attorney's Office that my abilities would be as effective in behalf of a prosecution as they had been in my own defense and, therefore, that they should follow my advice on legal strategy."

"Because of the fantastic and initially unbelievable nature of the conspiracy against the United States, my allegations that it existed were in some danger of being refuted through the argument that they were the figment of a crackpot's imagination. Therefore, it was important that the record show that I had won a contest of the kind that a crackpot cannot win."

The Calderon prosecution became a vehicle for appellant's plans as outlined in the above quoted statement through the following circumstances:

Defendant Calderon and defendant Diaz had been arrested at Los Angeles City College by a couple of campus security agents, Gary Dayton and Patrick Delaney, who claimed to have seen them commit oral copulation in the toilet stalls of a restroom. After making the arrests the security agents called the Los Angeles Police Department, which sent a couple of Officers, Bootow 7894 and Rodriguez 15727, to transport the defendants to the police station. While at the campus Officer Bootow prepared an arrest report from statements made to him by the security agents. The agents told him that they had not only witnessed oral copulation, they had seen the defendants loitering outside the building containing the restroom and had seen one follow the other inside. At the preliminary hearing the agent who testified, Gary Dayton, completely contradicted the part about loitering and following. At the trial the other agent also repudiated this part of the report and tried to explain the contradiction by hint-

ing that the Officers wrote down things that he had not told them. Both Police Officers attended the preliminary hearing. From their demeanor, and from Mr. Calderon's account of their conduct while he was being transported to the police station, appellant concluded that these Officers were quite professionalized. The two security agents appeared to be anything but.

Another statement by the security agents, one which, because of the architecture of the restroom, could not possibly be true, was that before entering the stalls they had seen the defendants' feet in incriminating positions by means of spaces between the bottoms of the stall partitions and the floor. At the preliminary hearing agent Dayton testified as to the width of these spaces and the views he had obtained thereby as follows:

> Q How far from the floor do they (the partitions) start?
>
> . . .
>
> A About 18 inches.
>
> . . .
>
> Q When you first observed Mr. Diaz and someone else, Mr. Diaz in compartment three and someone else in number two, what did you observe; of what part of the body did you observe of the individuals?
>
> A I observed from the knee down; maybe not quite the knee.
>
> Q An I imagine you saw legs; how many legs?
>
> A I seen four legs. (Reporter's Transcript,

> Preliminary Hearing No. A-259427, page 19, lines 2-20)

This testimony was given on April 16, 1970. On August 25, 1970, appellant sent the District Attorney, then Evelle Younger, a letter containing statements quoted in part below:

> "Not only do I want you to have this information, Mr. Younger, I want it generally known in the law enforcement apparatus that you have it. . . ."
>
> . . .
>
> "Enclosed is a page from the reporter's transcript of a preliminary hearing in Division 42 of action No. A259427. Underlined is testimony by one Gary W. Dayton, a Los Angeles City College campus policeman, in reference to the structure of one of the college restrooms. You will note his statement that the bottoms of the toilet stall partitions are 18 inches from the floor, enabling him to see the legs of occupants of two of the stalls from about the knee down. From your files, Mr. Younger, you will see that Dayton thereafter testified that by means of this 18 inch space he saw those legs in a position consistent with a violation of Section 288a, (a sex offense) and that he thereupon made an arrest."
>
> "Attached to the page from the transcript is a photograph of the same toilet stalls, in which the actual space under the partitions is shown by leaning a yardstick and a shoe against the outer partition. From the picture you can see that the actual space under the outer parti-

tion is about one fourth of that stated by Officer Dayton, and that the space under the other partitions about half what he says. By a visit to the restroom you can verify that the precise distances are four and three fourths and eight and one fourth inches respectively and that, therefore, it is impossible for Dayton to have seen four legs, three legs, two legs or one leg positioned as he says or in any other position."

"I feel sure, therefore, that you will agree that probable cause exists to believe Officer Dayton is guilty of perjury. I am not as confident, however, that you will issue a complaint. Therefore I propose an alternative."

"On September 3 a hearing on said action will be held under Section 1538.5 in Department 114. If you will dispatch a deputy to verify the actual dimensions of the restroom and testify thereto at the hearing the rights of the defendant will be protected to that extent."

Copies of the photograph and the page from the transcript enclosed with the letter are attached as Appendix M.

On October 5, 1970, a hearing was held under Penal Code Section 1538.5 (illegal search) in which agent Dayton changed his testimony about the views of the feet as follows:

> Q Okay. Now, in—today you have testified that what you could see was about mid calf. What could you see?
>
> A Ah, I saw the—the—I saw a portion of the leg, this—I knew I had seen a portion of the leg and—and I—since that time I became curious as to the heighth (sic) of the partitions from the floor to the bottom of the partition and I went back and checked it and it is approximately, ah, eight inches, maybe just a little bit more than eight inches, and so I know now that I saw a portion of the leg on the man in stall 2 and the feet, and maybe an ankle of the man in stall 3. (1538.5 Transcript No. A-259427, page 52, lines 11-19)

The other agent, Delany, did not testify to seeing the feet in incriminating positions from outside the stalls during the criminal action, but during the teacher dismissal and credential revocation proceedings he testified that while standing outside the stalls he had "observed the feet in stall No. 2 pointed in a southwesterly direction. I only saw one foot in stall No. 3, facing in an easterly direction." (Reporter's Transcript No. 029, page 19, lines 16-18)

As is shown in the photographs attached as Appendices M and N, the restroom had four stalls, but the innermost one was always locked and the outermost one did not afford much privacy. The partition between the two center stalls contained a hole positioned for oral copulation. Mr. Calderon had occupied the outer of the two center stalls and the codefendant had occupied the other one. The tips of the left feet of persons seated in the two center stalls in normal positions would be visible from the entranceway into the

restroom. However, if the feet of the occupants were turned toward each other as testified to, the feet of the occupant of the nearest stall (Mr. Calderon's) could not be seen from any position outside the stalls and the foot of the other occupant could only be seen from a particular position nearer the stalls than the restroom entranceway where the security agents had said they had seen the feet.

On October 6, 1970, at the 1538.5 hearing, appellant testified to these facts. Thereupon, at approximately 12 noon, the Judge decided to move the Court to the restroom for an inspection, and the Clerk telephoned the campus police that the Judge would arrive at 2 o'clock. At 1:30 security agent Delany rushed into the courtroom excitedly to say that the stall partitions had been demolished, and that there was nothing left of them to inspect other than a pile of boards lying in the restroom. That afternoon petitioner visited the restroom, by which time even the boards were gone, and took the photograph attached as Appendix O. .

During the teacher dismissal proceedings there were indications that the persons who conducted the hearings had been informed in advance of the stall destruction and instructed to behave as though this were not a suspicious circumstance.

At the non-reemployment hearing, after being informed as to the purpose of the 1538.5 Judge's intended visit to the restroom, Hearing Officer E. F.

De Vilbiss responded to the testimony that the stall partitions had been hurried destroyed as follows:

> "What is the point you are trying to make, Mr. Collins? The fact that the partitions were taken down before the judge went out there? So what? What's the point?" (Administrative Hearing Transcript No. OLA 26018, page 101, lines 25-27)

It is certainly difficult to believe that the Hearing Officer did not understand what the point was.

In the other teacher dismissal proceeding, No. NEC 10832, after agent Delaney had given his testimony about the feet, but before the attorney's had raised any question about the feasibility of such views, the Judge, the Honorable Arch Tuthill, moved the Court to the restroom. There he had Mr. Calderon's two attorneys stand where the center stalls had been, but only with their feet in normal positions, while Mr. Wagner held a broomstick where the bottoms of the stall partitions had supposedly been and the Judge took sightings. On returning to the courtroom the Judge pronounced himself fully satisfied that the security agents could have seen the feet as described. When the defense attorneys asked him why he had not at least had them stand in the incriminating positions alleged, the Judge replied, "I can visualize it."

At the credential revocation hearing agent Delaney offered the following explanation for the conflict between his testimony and the arrest report:

BY MR. CALDERON:

Q (reading)

"The witness stated that they had observed Suspect 1, Diaz. loitering around Sierra Hall, on the campus of LACC. Witness stated that Suspect 1 went into Sierra Hall and observed Suspect 2 go into the men's room. After Suspect 2 went into the men's room, Suspect 1 entered the same men's room."

Mr. Delaney, is that portion of the arrest report true, of your own knowledge?

A Well, as indicated on the front page of the arrest report, under the categorization of court information, it says that the officer can testify to the elements of the arrest and booking of the defendants. Witnesses 1 and 2 can testify to the elements of the crime. I can only testify to what I know. I cannot testify to what he put down there. And from the way you read it, it does seem that, probably, they have their 1's and 2's mixed up.

. . .

Q Then the statement on the arrest report that Mr. Diaz was loitering and saw myself enter the restroom is not true of your own knowledge?

A Not that I know of.

. . .

Q Did you read the report after the officer wrote it up?

A Not that I remember.

Q Is this standard procedure, just to let it go without reading it?

A I have already indicated that I wrote my own arrest report, and I testify from my own arrest report. What is on their arrest report it is up to them to put down properly, in their own form. . . .

On September 9, 1970, that is, about two weeks after the date of appellant's letter to Mr. Younger, Mrs. Uber was approached by Mrs. Fleigel. The evidence in connection with this supports the following theory:

Mrs. Fleigel was used by persons in the Los Angeles branch of the District Attorney's Office to induce Mrs. Uber to accept some jewelry as security for part of the face rejuvenation fee. This was pursuant to a plan whereby Mrs. Fleigel would then complain to the Department of Consumer Affairs that the jewelry had been embezzled. The Department of Consumer Affairs would consult with the Van Nuys branch of the District Attorney's Office which, in ignorance of the plot, would issue a complaint against Mrs. Uber charging grand theft. Thereupon Mrs. Fleigel would disappear and the charge would be dropped for want of a complaining witness. A record would now exist indicating Mrs. Uber had committed a theft and, because of appellant's involvement in the matter, he would look dishonest himself. From this it would be argued that the evidence he presented in the Calderon prosecution was phony.

This theory does not assume that Mrs. Fleigel necessarily knew that she was being used by the District Attorney's Office. The facts brought out during the trial suggest that she conducted her affairs in a manner such that she would associate with shady undercover agents. One of them could have sold her on the idea of obtaining the benefits of the face rejuvenation procedure and then getting her money back by telling the authorities it had been performed unlawfully and that Mrs. Uber had stolen her jewelry.

This theory does not imply, nor does appellant believe, that the Deputy District Attorney assigned to prosecute this case, Roy M. Carstairs, or the investigating officer, John P. Gentile, had any knowledge of the plot appellant has outlined, or that they proceeded other than in good faith.

However, appellant believes that as the case progressed Mr. Carstairs came under undue pressure from his superiors to get a conviction. During the trial Mr. Carstairs stipulated to the following:

> THE COURT: In other words, the People would be willing to stipulate that in 1970 in this case of Calderon and Diaz, A-259427, that the defendant, Mr. Rummler, testified as a witness for the defense adverse to the prosecution. And that during the course of that trial it became known to the District Attorney's Office that Mr. Rummler was engaged in the facial rejuvenation business in some way.
>
> MR. CARSTAIRS: So stipulate, if it becomes relevant.

In the teacher dismissal proceedings the County Counsel seemed to be working closely with the District Attorney's Office, and when appellant testified concerning the structure of the restroom stalls the County Counsel brought up the prosecution of Mrs. Uber as follows:

> Q Do you have a license to conduct a cosmetology business?
>
> . . .
>
> MR. COLLINS:—Your Honor, I object to this. I don't think it has any relevance to what we are trying to decide today.
>
> MR. WAGNER: I think it does. I think if I can show that this man is conducting an illegal activity, that this shows his contempt, if you would—
>
> HEARING OFFICER: How are you going to show that he's conducting an illegal activity?
>
> MR. WAGNER: By showing he is conducting it with a partner, neither have licenses, then conducting an illegal activity, not licensed. If they have that type of contempt, if you would, for good order in law, then certainly he would have that type of contempt for a proceeding—

Footnote 1 of the Opinion states that "Although the witness' name is spelled several different ways in the transcript, she testified 'Flagel' is her legal name and is the correct spelling of it. The names were similar in pronounciation, in any event."

The reference is to the fact that the witness testi-

fied to a different spelling of her name each time she was sworn in as a witness at appellant's preliminary hearing, Mrs. Uber's trial, appellant's hearing under Section 1538.5 and at appellant's trial, and that she used a fifth spelling when she signed the contract for the rejuvenation services. Appellant questioned her about this as follows:

> Q BY MR. RUMMLER: Of these four names, F-l-a-g-e-l, F-l-e-i-g-e-l, F-l-e-e-g-e-l, and F-l-e-g-e-l, is any of them your legal name at present?
>
> A At present?
>
> Q Yes.
>
> A Well, I guess it's my legal name all my life, because its my birth name.
>
> Q The name F-l-a-g-e-l is your legal name?
>
> A That's right. (Reporter's Transcript, page 388, lines 13-21)

Be that as it may, in a motion by the People from which appellant was absent, not having been notified of it, the following exchange took place between Deputy District Attorney Norman Montrose and Judge Light:

> MR. MONTROSE: Now unfortunately Mrs. Flaegel—there's a prior divorced name—all of her identification is in the name of Dorothy Ross which she showed me in the wallet. I wonder if the minute order or the record can show "Dorothy Flaegel, also known as Dorothy Ross."

> THE COURT: Yes. But, there will be a record in this case that anyone, including Mr. Rummler, can see her name now. (Reporter's Transcript of Proceedings January 11, 1974, page 3, lines 3-13)

When Mrs. Fleigel first approached the Department of Consumer Affairs after undergoing the face rejuvenation procedure she told the investigating officer, J. P. Gentile, that when Mrs. Uber had asked for collateral for the balance of the fee, she had declined, but that she had brought some jewelry with her "for safekeeping" when she underwent the procedure and that she "forgot the jewelry" when she left. She told Mr. Gentile that Mrs. Uber thereupon stole it, and her statements were incorporated into the first complaint (against Mrs. Uber only).

At appellant's preliminary hearing Mrs. Fleigel made no representation of having brought the jewelry for safekeeping and instead testified:

> "I told her I just had eight and would she take some jewelry as security." (Preliminary Hearing Transcript, page 11, lines 7-8)

Thereupon Mrs. Uber and appellant filed a complaint with the District Attorney's Office alleging that Mrs. Fleigel had lied in her original statements to Mr. Gentile.

At appellant's trial Mrs. Fleigel again changed her statement, this time to the effect that only part

of the jewelry had been deposited for security and that the rest had been brought for safekeeping.

The Opinion notes with approval that when appellant inquired of Mrs. Fleigel whether she had a passport to Europe, "The prosecution's objection was sustained, the court adding, 'Whether Mrs. Fleigel had to go to Europe or whether she didn't, whether she told the Judge the truth or not is not relevant to the issues in this case. Or, has so little relevancy and opens up so many other avenues, that the Court will exclude it under 352 of the Evidence Code.' "

This was in reference to the fact that on April 27, 1973, about two weeks before the date then scheduled for appellant's trial, Mr. Carstairs made a motion to have Mrs. Fleigel conditionally examined, that is, to in effect permit her to present her testimony at the trial by deposition rather than in person. The motion was based on a representation by Mrs. Fleigel that she was leaving for Europe April 30, 1973, and therefore could not be present at the trial.

Appellant supposes Mr. Carstairs believed her, initially at least, but the motion smacked of fear of being questioned by appellant about the jewelry under the discerning scrutiny of a jury. The Judge to whom it was presented, the Honorable D. Sterry Fagan, had received three days notice and had scheduled an hour for examining Mrs. Fleigel who was present in the courtroom. At this time appellant pointed out to the Court that if Mrs. Fleigel were really leaving for Europe the following April 30 she would have a passport and asked that she be required to prove this. Thereupon Judge Fagan suddenly ran out of time for the hearing and postponed it until the following May 2, by which time Mrs. Fleigel had left for unknown parts.

Appellant then wrote to the Chief of the Los Angeles Police and the Director of the Los Angeles branch of the Federal Bureau of Investigation, asking them to determine whether Mrs. Fleigel had a passport to Europe. The Chief's Office replied that the Los Angeles passport office had no record of a passport issued to Mrs. Fleigel, Appendix P, the FBI director referred the question to the State Department, Appendix Q, and the State Department sent petitioner a letter saying it had no record of such a passport, Appendix R.

Because of the numerous names Mrs. Fleigel uses it is, of course, possible that she could have had a passport under some other name. In addition Mr. Carstairs showed appellant a cablegram he had received from London on May 4, 1973, giving the sender's name as Dorothy Fleigel. However, a person in the United States could have a cablegram sent from London under his name if he had a friend there willing to do him a favor. Moreover, on July 19, 1973, that is, about two and a half months after the date of the cablegram signed Dorothy Fleigel, Mr. Carstairs told the Superior Court during a hearing in the copending case against Mrs. Uber, "She (Mrs. Fleigel) has been in a hospital for the last two and a half months." (Re-

porter's Transcript, People vs. Nona Uber No. A-122256, page 128, lines 4-6)

During the trial it turned out that a piece of the jewelry had been stolen from official custody after being seized by the investigating officer, John P. Gentile. Mr. Gentile's testimony on this was as follows:

> Q BY MR. RUMMLER: I will show you the velvet box apparently referred to in the return and ask you if it contains all the articles listed on the return?
>
> . . .
>
> THE WITNESS: There's seven. Seven articles.
>
> . . .
>
> THE COURT: There are seven articles if you count a pair of earings as two articles.
>
> . . .
>
> Q I will show you an envelope with a listing of jewelry on it, having at the bottom of the envelope the following statement: "Taken by J. P. Gentile, from Apartment 1, 10822 Ventura Boulevard, North Hollywood, 12-5-70," and ask you if it refreshes your memory.
>
> THE WITNESS: That's my handwriting.
>
> Q BY MR. RUMMLER: How many articles of jewelry are listed on the envelope, Mr. Gentile?
>
> . . .
>
> A Well, I see seven articles listed numerically.

> Q BY MR. RUMMLER: Yes. But, do you see the item where it says yellow gold earrings, two pearls in each?
>
> A Yes.
>
> Q So, that would be a total of eight items if you counted each earring as a separate item?
>
> A Yes.
>
> Q So, one of the items that is listed on the envelope appears to be missing from the blue velvet box, is that correct, Mr. Gentile?
>
> . . .
>
> A Yes it is. The only thing I can see that—there might be a repetition where I describe—no—I can't—no. (Reporter's Transcript, page 523, lines 22-24; page 524, line 17; page 525, lines 2-3; page 526, lines 9-24; page 528, lines 6-15; page 529, lines 26-28)

Referring to the evidence locker in which the jewelry had been placed after being seized, Mr. Gentile testified as follows:

> Q Do you know whether Mr. Carstairs has a key to that locker?
>
> A Yes, I do. And I know he doesn't have one.
>
> . . .
>
> I might add also that I myself didn't have a key. Only one man has a key, so far as I know, to that particular locker. And that's the supervisor.
>
> It's under thorough control. For that reason, they just won't allow keys going around. No one has a key.

Q BY MR. RUMMLER: Would that be Lemar Detro?

A Yes, D-e-t-r-o. (Reporter's Transcript, page 710, line 19 to page 711, line 6)

Prior to the filing of the charges for the second time, appellant had inquired of Mr. Detro during a conversation at his office if the jewelry was still in official possession, and Mr. Detro had refused to answer.

The minute order attached as Appendix S states that on January 11, 1974, that is, about seven weeks after the verdict, Judge Light released the jewelry to Mrs. Fleigel on condition that she return it in case of another trial. Mr. Carstairs was absent from this proceeding, as was appellant, who was not notified of it and did not learn of it until over a year later. The motion for its return was made by Deputy District Attorney Norman Montrose.

A surmise is justified that not only did Mrs. Fleigel have enough association with the District Attorney's Office to be given custody of court exhibits, but that the association extended high enough to induce Mr. Detro to open the exhibits locker to her without benefit of court order.

The within Opinion, in repeatedly falsifying the record in a manner to libel appellant, reflects an intent to handicap appellant in presenting to law enforcement agencies and the public, not only the real situation respecting the jewelry, but also the scheme

of secret legislation per "case law" that was reflected in the Calderon teacher dismissal proceedings.

At the time the teacher dismissal proceedings were initiated they were apparently represented to the Deputy County Counsel assigned to prosecute them, John Wagner, as being pursuant to a policy of barring from the teaching profession anyone suspected of having engaged in homosexual conduct, irrespective of whether the evidence was sufficient to support a criminal conviction. Actually, the proceedings fell into an already operative secret scheme by persons in the State Legislature, law enforcement agencies and appellate courts to obtain, by trickery and subterfuge, decriminalization of homosexuality. Their objective was to reduce the legal classification of homosexuality to a civil default which could be charged in a civil administrative proceeding, so that a defendant against such a charge would not be entitled to the procedural safeguards which are afforded a criminal defendant. The power to bring the charge in a civil proceeding by the Government was to be used as a means of political blackmail of public employees and holders of state licenses. This purpose required, in the case of school teachers, that the authorities have discretion to hire a homosexual. This was so that a member of the clique could remain in the school system in case he were adjudicated to have committed a homosexual offense.

Accordingly, the decision in the Calderon appeal No. 2nd CIV 41520, written by Justice Mildred Lillie,

was to the effect that when a teacher had been found to have engaged in dissolute conduct in a public toilet it was *optional* with his school district whether to discharge him.

In collaboration with this the statutes were to be changed so that it would no longer be a crime to engage in oral copulation or sodomy in a public toilet and so that such an act per se not longer worked an automatic dismissal of a teacher or revocation of his credential. This proposed statutary change was presented to the State Legislature by a leading member of the Senate Education Committee as S.B. No. 513. Copies of the pertinent pages of the Bill are attached as Appendix T.

Three of the four Justices who heard appellant's appeal, Justice Dunn, Files and Jefferson, had manufactured some of the case law that Justice Lillie cited against Mr. Calderon, *Silver* v. *Watson* (1972) 26 Cal. App.3d 905.

These Justices, being implicated in the plot, had additional reason for consternation some months before the present Opinion was written, on learning that they had been betrayed by the one person they thought they could count on in maintaining a pro-law enforcement facade—John Wagner.

In the Calderon appeal No. 2nd CIV 41520 (before Justice Lillie) Mr. Wagner filed a cost claim of $52.40 against Mr. Calderon, on the representation that he had spent this sum for the printing of the Respondent's

Brief. In the other Calderon appeal No. 2nd CIV 40727 (before Justice Cobey) Mr. Wagner filed a claim of $35.35 on the same representation. Neither of these sums nor any sum had been so spent, and Mr. Wagner had good reason to know that appellant would prove this and use it against the instigators of the teacher dismissal proceedings. Attached as Appendix T are copies of the claims together with an evasive letter from the Los Angeles County Grand Jury responding to a complaint by appellant about the claims. It is obvious from the Grand Jury's letter that the District Attorney's Office is shutting its eyes to a proven crime. Although Mr. Wagner could not foresee just how appellant would use this, he would have a general idea, and he would know that it might well cause a gradually increasing leak in the dike.

The claims, being insufficient to be any more than a nuisance to Mr. Calderon, do not make sense except as the expression of a subconscious wish in Mr. Wagner to incriminate himself or the Court of Appeal. Such a motivation could derive from a desire to expiate a sense of guilt or take revenge on the District Attorney's Office for involving him in a situation degrading to his ego.

Mr. Wagner appears to be a Germanic ruthless zealot, the type that believes that the end justifies the means, and his motives at the start of the teacher dismissal proceedings were apparently sincere enough. Evidently the District Attorney's Office told him the acquittal was a miscarriage of justice and he took this

as a moral license to use any and all means to correct the injustice. Later he apparently developed misgivings that crystalized in a realization that Mr. Calderon was in fact innocent. That Mr. Wagner is not impregnable against guile was evident when he stated concerning appellant during the teacher dismissal proceedings, "... this man has a gross bias and prejudice against the establishment and that establishment being personified by law enforcement agencies." (Administrative Hearing Transcript No. OLA 26018, page 161, lines 13-14)

Appellant had been concerned, when he assessed the Calderon preliminary hearing evidence, lest the prosecution catch on to how valuable the Los Angeles Police Officers' testimony would be to the defense and devise a way to get around it. One of the defense moves would be disguised as a motion for dismissal under illegal search, in which the anticipated denial would be reviewed by petition to the Court of Appeal. If the reviewing Justices (they later turned out to include Justice Cobey) granted the petition this would spoil the maneuver, changing into a virtual admission of guilt. If agent Delany proved to be a clever liar he could repair the effects of agent Dayton's testimony about the feet. Agent Dayton had testified that after he had seen the feet in normal positions his partner had opened and closed the door to sound as though they had left, and that then, on looking around the door partition, he had seen the defendant's feet pointed toward each other. Actually, the feet would have been

invisible from that vantage point had they been in the positions testified to, but there was a position nearer the stalls where part of one foot could have been seen. Therefore, all agent Delany needed to do was let Dayton's testimony run on ignorance and say that, when he looked around the partition, his suspicions had been aroused by the fact that the feet were now out of sight, that on approaching nearer to the stalls he had seen one foot pointed abnormally and that he had, therefore, entered the stalls to investigate.

Prudently, when appellant wrote the above quoted letter to Evelle Younger he added comments that would infuriate the recipients to where they would not think of these things.

He included an artfully worded diatribe about restroom arrests which, carelessly read, would sound as though the writer thought restroom homosexuality ought to be legal. It is a common police experience that persons with such opinions are inept and vulnerable in court.

In addition the letter contained an obviously unreasonable accusation against the Los Angeles Police Officers, Bootow and Rodriguez, and a horrendous blast against the Chief's Office and cops generally.

This would not affect the Officer's testimony. After a cop has been on the force a while you can't call him anything he hasn't been called already, and the pros learn to shrug that stuff off. However, it would

decoy the prosecution while Mr. Calderon was selecting a suitable attorney to represent him—an ex-cop.

A few months after the acquittal appellant wrote a letter to the City Council about a collateral matter and accompanied it with an account of the Calderon arrest. It was referred to Councilman Arthur K. Snyder who, without appellant's knowledge or intent, relayed it to the Police Commission. Evidently something was added to the communication in transit, since the Police Commission interpreted it as a complaint against Officers Bootow and Rodriguez. Appellant corrected them on that, with elaborate apologies and praise for the Officers' impartiality.

Later, during the 1538.5 proceedings in appellant's case, Judge London had occasion to comment, "I am impressed with Mr. Rummler's ability to gain assistance from the Police Department in connection with the information he got. . . . He has received apparently more assistance from the Los Angeles Police Department than I have experienced a criminal defendant having received." (1538.5 Transcript NWE, page 127, line 28 to page 128, line 6)

Before involving himself in the Calderon case appellant had obtained independent proof that Mr. Calderon was all pro with respect to his teaching duties and would always maintain a personal image appropriate to traditionally approved official standards for such duties.

Part of the fallout of the scheme to decriminalize

homosexuality has been the serious consideration in the Los Angeles City Council of a proposal to enable self-announced homosexuals to be employed as Los Angeles Policemen. Appellant has strongly resisted this in the Council as dangerous to the psychological effectiveness of the Police.

Being a Germanic ruthless zealot himself, appellant understands how desperately important it is to this breed to appear macho to itself. Therefore, he can well imagine the destructive effect that being a tool in the foregoing developments would have on Mr. Wagner's ego.

Appellant's descent is only half German. The other side is Irish, and of a strain notorious for trickiness, flippancy and humor. This side of appellant's nature regards his Germanic pretensions as a bit much. This does not make appellant any less of a relentless fanatic. It just keeps him from getting tired nerves. Such weariness is the result of tension, and when one's tongue is in one's cheek one does not become tense.

However, it *does* give appellant a problem in raising certain issues as to the propriety of Judge Light's conduct during the trial. This problem is as follows:

During the trial Mr. Carstairs characterized appellant as "a man who will cite, like the devil himself, will cite scriptures to his purpose and change his attitude exactly when it befits him."

Appellant would counter that by pointing out that the Marquis of Queensbury Rules do not mean one

should telegraph his punches. Part of the sport is to feint with one's left while planning a right cross.

Appellant has based some of his plans in this case on an awareness that any male jurist who would assist in the scheme to facilitate homo-frameups by administrative procedure is the type to be dominated by the kind of woman for whom the slang term is "fruit fly." That is a woman who finds red blooded attentions from a man uncomfortable, who seeks security in the company of male homosexuals and who tries in personal relationships and, when in politics, through social regulation to undermine male virility.

Appellant has also been mindful that for other, more normal, women the fact that a man is an appellate jurist often carries an aura of sophistication and accomplishment. Some men, when they are appellate jurists, capitalize on this to attract women young enough to be their daughters. Appellant, who is of the same age group and inclinations of such jurists, feels he can use this case to steal their aura and combine it with the asset of being able to make such women look like his granddaughters. Therefore, appellant does not find it personally unwelcome that the competition has allowed itself to be maneuvered into deglamorizing straits.

Accordingly, appellant has no wish to destroy his advantage by coming across as any sour pussed accuser of Judge Light, who certainly has no involvement in the collateral matters discussed above.

Judge Light showed a lot of class during the trial, as did the urbane and likeable Mr. Carstairs.

Ironically, this superiority is part of a pattern of evidence making it reasonable to inquire whether Judge Light took some extra-judicial directions during the trial from some official much higher in the law enforcement hierarchy than Mr. Carstairs. Some of this evidence is in the following:

The original compaint indicates Mr. Carstairs believed there was sufficient evidence to convince a jury that the solution applied to Mrs Fleigel contained phenol far in excess of 10 percent. Judge Light appeared to share that opinion. On the face of Section 7415, this would be a misdemeanor which, at the time the second complaint was issued, was no longer prosecutable because of the statute of limitations. However, proof of the application of more than 10 percent of phenol would still support a felony theft conviction on the theory that appellant had accepted the fee with intent to perform the service in violation of the licensing regulations.

Certainly Judge Light and Mr. Carstairs would be aware of that. Mr. Carstairs knew his way around a courtroom, where he was very much the polished advocate. Very evidently it was his and Judge Light's opinion that if he based the grand theft charge on an issue of whether more than 10 percent of phenol had been applied there was a substantial chance of a conviction.

Why, then, did Mr. Carstairs seek, and why did

Judge Light give, jury instructions which threw away this opportunity, which provided a virtual guarantee of acquittal of the grand theft charge, and which, although assuring a conviction of the medical charge, would divest that conviction of any significance as to intent to violate the law?

This was to be expected of someone who was feeling so nervous about the case that he was willing for appellant to emerge with a clean bill of health with respect to specific intent rather than take any chance at all on not getting some kind of conviction. Yet Mr. Carstairs had nothing personally to fear from an acquittal, and neither, of course, did Judge Light. Therefore, the impetus for those odd instructions would seem to have come from outside the courtroom.

True, the Judge dutifully recited that "The defendant is charged in Count II with the offense of theft by false pretenses and/or theft by embezzlement." (Reporter's Transcript, page 1179, lines 23-24) This suggests that someone was still clinging to the hope that the jury would believe that appellant had embezzled at least some of the jewelry, but it also suggests that the hoper was too excited to be realistic.

Another indication that Judge Light's position was not untrammeled is in the following naive argument he offered as a refutation when appellant explained that Mrs. Uber had not violated Section 7415 since, although her formula contained 35 percent of resorcinol, it only contained 10 percent of phenol:

> THE COURT: The point is this . . . If resorcinol contains phenol, if one of the components of resorcinol is phenol, then whatever amount of phenol is contained, for example, in an ounce of resorcinol, must also be included in the calculation of how much phenol is in the overall compound. (Reporter's Transcript, page 760, lines 22-26)

A smattering of high school chemistry is sufficient to show the absurdity of *that*. When a jurist of Judge Light's intelligence offers an absurdity in place of what the Judge plainly considered substantial evidence that Mrs. Uber had applied a much higher percentage of phenol than she testified to, appellant is constrained to express doubt as to whether Judge Light had full control of the proceedings.

Another indication of outside pressure was Judge Light's disposition of Investigator Gentile's testimony that a piece of the jewelry he had seized was now missing.

> THE COURT: . . . it's clear to the Court that no jewelry is missing. It's just a sloppy job by the investigator when he inventoried the stuff and copied something down twice, or just didn't put it in there accurately, because if anybody knows what the jewelry is Mrs. Fleigel knows. It's her jewelry. And she indicates it's all there. (Reporter's Transcript, page 1230, lines 20-25)

It is very unlike Judge Light to talk that way about the investigating officer.

That is the second time since the start of the Cald-

eron prosecution that evidence of a crime by the authorities has been shrugged off as "a sloppy job" by the reporting officer. The trouble with that explanation is that Officer Bootow and Officer Gentile are not sloppy. Mr. Gentile had obviously done a meticulous job throughout his part of the proceedings and had been a creditable witness for the prosecution, entirely correct in deportment.

In tracing to its source the influence Judge Light seemed to be under and finding the reason for it, it may be significant that the license revocation proceeding against Mrs. Uber originated in the Attorney General's Office. Since appellant was Mrs. Uber's partner, a default finding against her would tend to suggest that appellant had participated in at least misdemeanor malpractice. Since Mrs. Uber had retired and the agency had declined to direct the revocation proceeding against appellant's own license, the action made little practical sense as a purpose of protecting the public. It *did* make sense as a strategy by someone who, having discovered that appellant was not as "biased and prejudiced" against the police as he had seemed, felt it would be prudent to bias and prejudice the police against appellant.

The trial in absentia aspects of the license revocation proceeding suggest that whoever conceived it had something in common with whoever actually wrote the within Opinion, inasmuch as that Opinion, when it says there is no merit in what it calls "defendant's fifth contention" or "the fourth contention," does not

state for publication what those contentions are. The Opinion is also reticent as to its basis for rejecting, in its closing sentence, what it identifies only as appellant's assertion that " 'any conduct by appellant other than said (face rejuvenation) performance (is) immaterial to this appeal.' "

While appellant is sure the public would be interested in hearing what conduct by appellant other than said face rejuvenation performance the Justices feel is material to this appeal, he supposes that in inducing them to enlarge on that he would be up against the same problem Judge Peter S. Smith had with Evelle Younger in the case of People vs. Senff No. A-536333.

Mr. Younger had publicly and widely advertised that he was violating a gag order issued by Judge Smith in order to test the Constitutionality of such orders. Judge Smith had him served with a summons to appear for a show-cause hearing as to why he should not be cited for contempt. The following exchange is reported in the transcript of that hearing, page 6, line 19 to page 8, line 24:

> THE COURT: . . . Is it my understanding that Mr. Younger is voluntarily absenting himself from these proceedings and has knowledge of the proceedings, today?
>
> MR. BUSCH: That is right, your Honor.
>
> THE COURT: Very well. He has decided to rely on his right to represent himself through counsel and not appear?

MR. SONDHEIM: Just let me say—

THE COURT: Is that right or not?

MR. SONDHEIM: Only in part, your Honor, if I may explain.

THE COURT: Just a minute. Sit down a minute. He is either here or he isn't here, isn't he?

MR. SONDHEIM: He is not here today, that is a fact, your Honor.

THE COURT: All right. Suppose you tell us about it, if you want to explain it.

MR. SONDHEIM: . . . the District Attorney was here Tuesday and did attempt to make himself available to your Honor. . . .

THE COURT: . . . he did appear two days, all without any notice at all when no one was here and demanded an immediate hearing when nobody was around . . . this is indeed strange conduct for somebody who has decried secret proceedings . . . he appears to be afraid to be questioned by somebody in the presence of the public. . . .

THE QUESTIONS ARE SUBSTANTIAL

The face rejuvenation procedure here has "been practiced for hundreds of years by lay technicians," as Dr. Aronsohn testified. Dr. Aronsohn, who both practices and teaches the procedure himself, also testified that in gaining expertise he "learned a lot from lay technicians." (Reporter's Transcript, page 408, lines 12-13; page 422, line 4) He also testified that the procedure has inherent hazards which cannot be removed by having a physician perform it rather than a lay technician. However, the dangers can be decreased by requiring the prospective client to obtain a medical clearance, and it seems wise to at least have a physician on call during the procedure.

These medical precautions can be analogized to those taken in connection with a boxing match. A physician attends at ringside and examines the boxers prior to the match. Just as a boxing promoter is not required to know how to give a medical examination or set bones in order to be licensed, even though such knowledge may prove necessary to the safety of the boxers, a face rejuvenator should not be required to have such knowledge, and it is even more unreasonable to require him to meet the licensing requirements of such completely irrelevant vocations as curling hair or applying lipstick. Neither should he be penalized for making the performance of his service conditional on the client being examined or attended by a physician in whom the face rejuvenator has confidence.

The present case enables this Court to set guide-

lines whereby the power of the State to regulate the practice of professions will be confined to reasonable limits.

As noted in *People* v. *Penny* (1955) 44 Cal.2d 861, 864, "phenol (carbolic acid)" and resorcinol are "of the same chemical group." However, phenol is a deadly poison, whereas resorcinol, like salicylic acid, is less poisonous. Hence, Dr. Aronsohn's comment that Mrs. Uber's formula was "very astute" in using more resorcinol than phenol. Phenol, like any corrosive, will not be absorbed into the system if is applied in high concentrations, e.g., 90 to 100 percent. In reference to such absorption Dr. Aronsohn testified, "In concentrated solutions, I feel personally it is very safe. If it is diluted by water the phenol when it is applied to the skin will not be dissipated into the skin. It will go deep into the tissue and you can get burning and scarring of what we call the dermis, which is the true skin." (Reporter's Transcript, page 416, lines 23-28) There will also be a danger of systemic absorption and harm with possible if rare chance of death.

This would seem to be the reason for the prohibition of Business and Professions Code Section 7415 against applying phenol in a solution of more than 10 percent. In 1927, when that section was enacted (it was then called Section 12a of the Act Concerning Cosmetology) the Legislature was undoubtedly unaware that in high concentrations phenol is about as safe as any other caustic and that even in medium concentrations there is relatively little danger of systemic

absorption if alcohol or some other buffering agent is used as the solvent instead of water. The State of Florida is apparently better informed in this regard that the California Legislature was. In Florida, where face rejuvenation with caustics is also defined by law as the practice of cosmetology (Florida Statutes, Section 477.03), in the application of phenol a cosmetologist is not limited to solutions of 10 percent.

The replies by the Board of Medical Examiners and the Board of Cosmetology to appellant's inquiries about the 10 percent limitation indicate that those agencies have little or no idea as to the reason for it.

In order that laws regulating the professions keep pace with the advance of knowedge, it is important that legislatures not acquiesce in the continued existance of such laws on the basis of "mine not to reason why." Through appellant's challenge of the statutes applied or applicable to this case, this Court can protect the recourse the citizen is provided when a legislature defaults in this regard.

In the Calderon criminal prosecution, during the proceedings under Penal Code Section 1538.5 only, Mr. Calderon acted in propria persona. Thereby he developed evidence that his trial attorney found quite useful.

Therefore, the Calderon case is pertinent to the contention by appellant that it is for the defendant, not the State, to decide whether he shall act as his own attorney.

Appellant's own case brings into sharp focus an instance of collaboration by the California Appellate Justices with the State Legislature to bring about the destruction of a Constitutional right without the knowledge and consent of the governed. This instance is reflected in *People* v. *Sharp* (1972) 7 Cal.3d 448. This decision was prepared prior to the submission to the voters of State Proposition 3, although it was entered after that date. Proposition 3 was an amendment of the California Constitution that deleted the right of a criminal defendant to represent himself. It was written in such a way that a careless reader (the average voter) would not realize this and would think it was intended merely to secure the right of counsel. A copy of the Proposition is attached as Appendix V.

The proposition passed by a very slim margin. Meantime the California Supreme Court had already decided to rule in *Sharp supra* that a criminal defendant did not have a Constitutional right to represent himself.

Thus, heads the proponents of this measure would win, tails the opponents would lose, and a cornerstone of the Anglo Saxon system of jurisprudence would be destroyed.

Three days after the decision in *People* v. *Sharp* was filed Judge Davenport cited it as authorizing him to withdraw appellant's status to represent himself. Before citing it Judge Davenport asked appellant, "Do you have anything to say?" Appellant pointed

out that as a defendant in propria persona he had been successful in such moves as he had made in the case thus far. Judge Davenport replied, "You have *un*succeeded," with a triumphantly hostile stress on the *un*. "This court has denied. The recent case of the Supreme Court you have no right to appear in pro per." (Municipal Court Transcript, July 10, 1972, page 3, line 27 to page 4, line 1)

This shows that the power to deny a defendant self-representation can be used against him.

At the time Judge Di Giuseppe jailed petitioner for three days he told petitioner that he was liable to be jailed indefinitely if he showed up in court again without a lawyer. This did not intimidate petitioner, and he emerged from that dispute with his status to represent himself restored.

This is because such threats are based on bluff, and any individual with know-how and determination, whether he has much money or not, can still obtain the full power of the State against an infringement of his Constitutional rights. Getting a law against such a right passed by trickery or planting people in the Appellate Courts who will say that the right no longer exists does not destroy the power of the State to enforce the right. It just means that such right is to be obtained through an extraordinary application of the governmental process.

If this process is to retain its vitality the persons responsible for the trickery must be prosecuted. While

prosecution is not the function of this Court, it *does* have jurisdiction, through writ of certiorari, to inquire into the entire circumstances of this case.

For the implementation, not only of his own rights, but also of the People's rights, petitioner respectfully urges this Court to do so.

Respectfully submitted,

WYN RUMMLER
In Propria Persona

APPENDIX

APPENDIX "A"

[Crim. No. 24878. Second Dist., Div. Four. Jan. 17, 1975]

THE PEOPLE, Plaintiff and Respondent, v. WYN RUMMLER, Defendant and Appellant.

COUNSEL

Wyn Rummler, in pro. per., for Defendant and Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Norman H. Sokolow and Lawrence P. Scherb II, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

DUNN, J.—An information in two counts charged defendant Rummler with (count I) violation of Business and Professions Code section 2141.5 (willful and hazardous practice of medicine without a license), a felony, on or about 24 September 1970, and (count II) violation of Penal Code section 487, subdivision 1, i.e.: grand theft, a felony, the same day. Defendant pled not guilty. A jury found him guilty of count I and not guilty of count II. Further criminal proceedings were suspended and defendant was ordered placed upon three years' probation under various conditions. He appeals from the order for probation (judgment, Pen. Code, § 1237.)

In the trial court and here defendant appears in pro. per. His first contention is that a withdrawal, at one time, of his pro. per. status "was intended to handicap and did severely handicap his defense." The clerk's transcript discloses that on 29 March 1973, defendant's motion to appear in pro. per. was denied but that, 7 days later, on 5 April 1973, the same judge (Rosenthal) granted him such right and, thereafter, he so appeared, filing

numerous motions. The trial did not begin until October 1973. Our attention is invited to no part of the record supporting the claimed error.

(1) Defendant next contends the court (London) erred at his Penal Code section 1538.5 hearing, begun 5 October 1973, when it quashed the subpoena defendant caused to be issued for Dr. Richard Aronsohn. The subpoena was issued for Dr. Aronsohn to testify at the hearing and was quashed on the prosecution's motion.

The 1538.5 hearing was based upon defendant's efforts to traverse a search warrant (Pen. Code, § 1538.5, subd. (a)(2)) pursuant to the execution of which an officer (Gentile) had recovered various items from an establishment operated jointly by defendant and a Mrs. Uber. Gentile had submitted an affidavit to the magistrate in support of the search warrant. In the affidavit he had stated that Dr. Aronsohn had informed him that the complaining witness, Mrs. Flagel,[1] had exhibited to him burns caused by the use of phenol in a strength ranging between 50-88 percent. Gentile, Phyliss Dowdell and the complaining witness, Dorothy Flagel, all had been called by defendant and testified as witnesses for him on his motion. Defendant wished to call Dr. Aronsohn to testify that he had not so stated to Gentile.

The prosecution argued that: (1) the prosecution was not for a misdemeanor under Business and Professions Code section 7415 but was for the unlawful practice of medicine under Business and Professions Code section 2141.5 and (2) even if Dr. Aronsohn was misquoted in Gentile's affidavit, such would be irrelevant inasmuch as there was ample matter also alleged in Gentile's affidavit to justify issuance of the warrant, so that eliminating the claimed statements of Dr. Aronsohn would accomplish nothing. On the basis of this response, the deputy district attorney opined that no hearing, such as discussed in *Theodor* v. *Superior Court* (1972) 8 Cal.3d 77 [104 Cal.Rptr. 226, 501 P.2d 234] was required or merited.

The trial court concluded there was no material inconsistency revealed and quashed defendant's subpoena. We are not concerned with determining whether the inaccuracies in the affidavit were due to intention, or to unreasonable or inadvertent causes (*Theodor*, p. 97), but merely with whether such inaccuracies are pertinent. Thus, *Theodor* states (p. 101)

[1]Although the witness' name is spelled several different ways in the transcript, she testified "Flagel" is her legal name and is the correct spelling of it; the names were similar in pronunciation, in any event.

that: "If the defendant seeks to controvert the allegations contained therein, it is his duty to come forth to reveal any inaccuracies." And, again (p. 103) "Before a hearing is required to test the veracity of an affidavit, the defense must relate, with some specificity, its reasons for contending that the affidavit is inaccurate."

In our case, Gentile testified as a witness for defendant that Mrs. Flagel stated to him that phenol had been used on her by Mrs. Uber and had badly burned her; that Dr. Aronsohn had examined Mrs. Flagel and thereafter had told him that phenol was used in a strength ranging from 50-88 percent. Mrs. Flagel herself testified at the hearing on the motion that she had been burned.

From Mrs. Flagel's testimony that she sustained burns, the court justifiably could conclude under the evidence that phenol was applied to her face, arms and hands in a strength greater than the 10 percent allowed to cosmetologists by Business and Professions Code section 7415.[2] Thus, whether the reported opinion of Dr. Aronsohn (that the strength ranged from 50-88 percent) was, or was not accurately reported is irrelevant. The magistrate would have been justified in issuing the warrant; a contradiction in this respect of Gentile's affidavit would be irrelevant. We conclude that *Theodor's* (8 Cal.3d, *supra*) rule is limited to hearings dealing with significant or consequential inaccuracies, not affecting the result, and affirm the trial court's order quashing the subpoena.

(2) Defendant's third contention is closely related to the contention just discussed and falls with it. Defendant appears mistakenly to assume that his prosecution under Business and Professions Code section 2141.5 was absolutely defensible by showing that he was guilty of a misdemeanor under Business and Professions Code section 7415. However, it is well to keep in mind that his prosecution was not based upon his use of phenol in a solution stronger than 10 percent but for personally, or aiding and abetting a person who "willfully, under circumstances or conditions which cause or create risk of great bodily harm . . . or death, practices . . . any system or mode of treating the sick . . . or . . . treats . . . any . . . blemish . . . disfigurement . . . or physical condition of any person, without having . . . a valid . . . certificate [to practice medicine] . . . ." (Bus. & Prof. Code, § 2141.5.)

[2]Business and Professions Code section 7415 reads in part: "Any licensee who . . . applies to any human being a solution of phenol greater than ten per cent . . . is guilty of a misdemeanor . . . ."

"Licensee" refers to a licensed cosmetologist. (Bus. & Prof. Code, § 7320 et seq.)

The fourth contention relates to a statement purportedly appearing in the search warrant affidavit relating to count II, i.e.: grand theft, and that contention also falls; defendant was found not guilty of that count by the jury, a fact defendant recognizes.

Defendant's fifth contention relating to the search warrant affidavit likewise is invalid, needing no discussion.

(3) Sixth, defendant contends the trial court (Light) erred in commenting during the trial and in instructing the jury on the law at the conclusion of the trial. In its instructions the court stated: "The art of cosmetology includes beautifying the face, neck and arms by use of cosmetic preparations, antiseptics, tonics, lotions or creams."

Thereafter, the court gave as follows the instruction now complained of: "It is the practice of medicine and requires a physician's and surgeon's certificate to apply to a human being in the furtherance of any treatment for any ailment, blemish, disorder or other physical condition any substance which both penetrates and alters human tissue; except that a licensed cosmetologist practising the art of cosmetology is authorized to apply to a human being a solution which has 10% or less of phenol as its only ingredient which both penetrates and alters human tissue."

Defendant cites no authority for his contention that the foregoing instruction, and comment by the court along the same line, was erroneous. As opposed to defendant, we have noted the fully supportive testimony of Dr. Aronson, given as an expert witness for the People during their case in chief; we also have noted Business and Professions Code sections 2141, 2141.5 and 7415.[3] We find no error in the court's comment or the formal instruction which paraphrased the former.

[3]Business and Professions Code section 2141 regarding the practice of medicine reads: "Any person, who practices or . . . who . . . treats, operates for . . . any ailment, blemish . . . without having at the time of so doing a valid, unrevoked certificate as provided in this chapter . . . is guilty of a misdemeanor."

Business and Professions Code section 2141.5 states in pertinent part: "Any person who willfully, under circumstances or conditions which cause or create risk of great bodily harm . . . or death . . . treats, operates for, or prescribes for any . . . blemish . . . or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter . . . is punishable by imprisonment in the county jail . . . or in the state prison . . . ."

Regarding section 7415, see footnote 2.

Business and Professions Code section 2137 states the authority of a licensed physician and surgeon.

At trial the People called Dr. Aronsohn as a witness. He testified to having examined Mrs. Flagel as an expert, also defining "chemosurgery" as involving "alteration of the structure of the body" and giving his own definition of the practice of medicine[1] as "anything performed to the body or on the body that either changes the tissue, the structure of the tissue or an organ or changes the physiology of a body." In his own practice as a plastic surgeon he used phenol, trichlorocetic acid, resorcinol and salicylic acid, all being corrosive substances; it was his "very firm" opinion on examining Mrs. Flagel that a corrosive agent had been applied to her face and hands; such application can induce bodily harm, such as scarring, hypo or hyperpigmentation and even death, requiring that the patient's cardiovascular and pulmonary systems be monitored; "phenol" is carbolic acid and, when properly diluted, may penetrate the outer skin layer; when used in concentrations of 50-60 percent "you are running a risk of getting scarring. Even in a physician's hands, I think it's unpredictable at that point;" resorcinol is also a "phenolic compound;" a solution used in a face-altering procedure comprised of 1 part phenol, 3 1/2 parts resorcinol, 1 1/2 parts salicylic acid and 4 parts alcohol[5] would have the effect of corroding the skin, "you would get scarring" and, if used without monitoring the heart or respiration, could cause serious danger; death could occur; the skin is in layers; the top layer is the "epidermis" beneath which are 3-4 layers of "dermis:" "The skin is a natural barrier. Once you penetrate the epidermis, you can alter the structure of that skin. It comes under the auspices of a drug under F.D.A. ruling;" in the case of Mrs. Flagel, not only the epidermis but the dermis had been penetrated.

A chemist testified that "Phenols are a class of compound. Resorcinol is another type of phenol" and is corrosive or caustic in its action. A pharmacist testified that phenol and resorcinol "both are phenolic in character" and that "both are caustic to the skin, depending upon the concentration used." A combination of 10 percent phenol with 35 percent resorcinol in a solution containing alcohol and salicylic acid "would have a high degree of causticity." If there were 15 percent salicylic acid and 40 percent alcohol the "Salicylic acid would increase the cuasticity [sic], yes."

[1]The "practice of medicine" is not defined in the Business and Professions Code.

[5]The mixture testified to by Mrs. Uber as being used by her was 1 part phenol, 2 1/2 parts resorcinol, 1 1/2 parts salicylic acid and 4 parts alcohol. Gentile, pursuant to the search warrant, had procured 3 bottles from Mrs. Uber's apartment, the contents of which were testified to by a chemist as containing 53 percent, 54 percent and 96 percent "phenolic type substance."

Defendant's complaint against the instruction flies in the face of this evidence; his contention concerning the instruction and the court's use of the term "derivative," in effect, is rejected.

In his closing brief, appellant states his position that the procedure followed was "an act of cosmetology" and not the practice of medicine. He further states that: "On the same grounds appellant is appealing the denial of his motion under Penal Code Section 995 and the overruling of his Demurrer." Defendant relies upon *Whitcomb* v. *Emerson* (1941) 46 Cal.App.2d 263 [115 P.2d 892] but, there, the facts were so entirely different that discussion of the case in conjunction with the present one is fruitless. There was sufficient evidence to support the information in the present case and we cannot substitute our judgment as to its weight. (*Williams* v. *Superior Court* (1969) 71 Cal.2d 1144, 1147-1149 [80 Cal.Rptr. 747, 81 Cal.Rptr. 761, 458 P.2d 987]; *People* v. *Malich* (1971) 15 Cal.App.3d 253, 264-265 [93 Cal.Rptr. 87], disapproved on other grounds in *People* v. *Medina* (1972) 6 Cal.3d 484, 489 [99 Cal.Rptr. 630, 492 P.2d 686]; *Buck* v. *Superior Court* (1965) 232 Cal.App.2d 153, 160-161 [42 Cal.Rptr. 527, 11 A.L.R.3d 1064].)

Defendant argues that Business & Professions Code section 7415 specifically permits the cosmetologist to use more than one ingredient that "penetrates and alters skin." This may be true, but the above evidence indicates phenolic compounds in solution "greater than ten per cent" was applied by Mrs. Uber to Mrs. Flagel and that the same was risky. If the evidence was such as to indicate a "phenolic compound" is not the same as "phenol," defendant was at liberty to argue this evidence. If he did not, the oversight was his and he may not now complain.

The present case is to be distinguished from *People* v. *Penny* (1955) 44 Cal.2d 861 [285 P.2d 926]. There, defendant was charged with a homicide, "involuntary manslaughter," resulting from applying phenol to a victim's face. Although defendant was not licensed, the Supreme Court there stated that, as a matter of law, defendant was engaged in the practice of cosmetology and the jury should have been so instructed. Defendant seizes upon this phrase as though exonerating him in the present case. It does not. Defendant in *Penny* was not charged, as here, with willfully practicing hazardous medicine without a license but with

homicide under Penal Code section 192, subd. 2.[6] The court reversed inasmuch as instructions given to the jury erroneously defined negligent homicide. One such instruction erroneously permitted the jury to infer that the unlicensed appellant there applied phenol in a solution which, if she were licensed, would have been a misdemeanor, only. Here, however, defendant Rummler was not charged with using phenol in solution stronger than 10%, but with willfully practicing hazardous medicine without a license to do so.

(4) Next, defendant contends the trial court unfairly limited appellant's right to testify in his own defense. This complaint relates to defendant's efforts to qualify himself as an expert. His argument cites no authority and directs our attention only generally to the record. No error is made to appear. Thus, first, the court sustained an objection to defendant's testimony but defendant ignored the court's ruling and kept right on with his answer. Next, he attempted to display to the jury "advertising brochures in which I was used as a model," and the court sustained objection to them. He next testified to letters of inquiry he had written requesting information as to books he might read. Objection to this testimony was overruled. He then endeavored to offer names of various "authorities" he had received "as proof that I had indeed made these inquiries." The trial court stated such was not relevant. We find no error.

(5) Defendant next contends the trial court improperly restricted his "right to question Mrs. Fleigel as to bias and interest." We do not find it so.

Defendant called Mrs. Flagel as a witness and endeavored to impeach her for bias (Evid. Code, § 780, subd. (f)), by showing that on an earlier occasion she had stated "to the Judge in Department E in Van Nuys on or about October 10th that you had had to return from Europe in order to testify in this case through my unreasonableness." Mrs. Flagel responded, "I certainly did . . . . 24 times." Defendant's next question to Mrs. Flagel inquired if she had a passport to Europe. The prosecution's objection was sustained, the court adding, "Whether Mrs. Fleigel had to go to Europe or whether she didn't, whether she told the Judge the truth or not is not relevant to the issues in this case. Or, has so little relevancy

[6]Penal Code section 192 reads in part: "Manslaughter is the unlawful killing of a human being, without malice. It is of three kinds: . . . 2. Involuntary — in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection . . . ."

and opens up so many other avenues, that the Court wi'' exclude it under 352 of the Evidence Code." Evidence Code section 352 states: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." No abuse of the trial court's discretion is made to appear. Defendant's other complaints, regarding his efforts to impeach Mrs. Flagel, all relate to her testimony regarding her jewelry and are irrelevant to this appeal, defendant having been found not guilty of the grand theft relating to it.

Defendant next contends the charge of grand theft was intended only to "inflame the jury while it considered the medical charge." No merit to this contention is shown and we discuss it no further, there being no showing to discuss.

Next, defendant contends Business and Professions Code sections 7321 and 7415 are unconstitutional, as are sections 651.3, 2399 and 7325. In his closing brief appellant also attacks the constitutionality of Business and Professions Code section 2141.5. Without detailing the varied bases for defendant's attacks, we reject them.

In his closing brief, defendant asserts "appellant's motives in performing the face rejuvenation procedure and any conduct by appellant other than said performance are immaterial to the issues of this appeal." His argument is improperly raised for the first time in his closing brief. (See: 6 Witkin, Cal. Procedure (2d ed.) Appeal, § 442, pp. 4405-4406.) In addition, his argument lacks any merit.

The judgment is affirmed.

Jefferson, Acting P. J., and Cole, J.,* concurred.

*Assigned by the Chairman of the Judicial Council.

APPENDIX "B"

ORDER DUE
April 17, 1975

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 4, Criminal No. 24878 Dunn, J. J. & C.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE

v.

RUMMLER

Appellant's petition for hearing DENIED.

SUPREME COURT
FILED
MAR 26 1975
G. E. Bissell, Clerk

Deputy

I, G. E. BISSELL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 16TH day of May A.D. 1975

Clerk

By Deputy Clerk

WRIGHT

Chief Justice

APPENDIX "C"

[redacted]
1522 N. Mariposa

April 1, 1969

William L. Ritzi, Assistant District Attorney
600 Hall of Justice
Los Angeles, California 90012

Dear Mr. Ritzi,

Will you please answer the first of the questions listed in the enclosed copy of an inquiry of the State Board of Medical Examiners — "(1) Can the facial regeneration treatment described below be lawfully performed without a doctor's supervision"—?

Judging by the attached answer from the Medical Board they feel the question is too debatable to be answered without advice of counsel — unless they customarily answer such queries through their lawyers. Either way the reliability of their reply will depend on how good a legal staff they have.

In any case I am arranging to give this treatment without medical supervision, and as to whether my purpose is a criminal one I figure I'd better get more than one estimate, lest I find out the hard way that it is.

A As you will see by the attached letter to the Medical Board the treatment consists of the application to the face of a special solution which, by dissolving the two top layers of the epidermis, results in the disappearance of wrinkles and blemishes. Although sedation is used during the treatment, and this would have to be medically directed, my question is whether the treatment itself, aside from the sedation, would have to be so directed.

It could appear that the said special solution, in going below the surface of the skin, comes within the requirement of Section 2137 that one have a medical certificate before "penetrating the tissues of human beings. However, this solution does not penetrate any farther than an ordinary face cream does. The difference is in the effect. Besides, at the date the wording of Section 2137 was decided on this treatment was so unheardof there's little likelihood it could have been contemplated by the legislature.

As a preliminary to possibly seeking clarifying legislation or rulings I have been trying to find out who it is that would make the determination as to whether this is or is not a medical treatment. Therefore, in your reply to the above question I would appreciate also being told how you arrived at your answer.

Very truly yours,

Mr. Wyn Rummler

APPENDIX "D"

COUNTY OF LOS ANGELES
OFFICE OF THE DISTRICT ATTORNEY
600 HALL OF JUSTICE
LOS ANGELES, CALIFORNIA 90012

EVELLE J. YOUNGER, DISTRICT ATTORNEY
LYNN D. COMPTON, CHIEF DEPUTY DISTRICT ATTORNEY
WILLIAM L. RITZI, ASSISTANT DISTRICT ATTORNEY

April 4, 1969

J. MILLER LEAVY, CHIEF, TRIALS DIVISION
ALLAN H. McCURDY, CHIEF, BRANCH AND AREA OFFICES DIVISION
JOSEPH L. CARR, CHIEF, COMPLAINT AND CITY PRELIMINARY DIVISION
HARRY WOOD, CHIEF, APPELLATE DIVISION
A. B. NATHANSON, CHIEF, MAJOR FRAUD DIVISION
JUNE SHERWOOD, CHIEF FIELD DEPUTY

Mr. Wyn Rummler
1522 North Mariposa Avenue
Los Angeles, California 90027

Dear Mr. Rummler:

There is a preliminary question to answer before one can reach the problem stated in your letter of April 1, 1969.

Neither your letter to me nor the one of February 14, 1969 addressed to the State Board of Medical Examiners contains your qualifications, if any, to administer the treatment you describe.

It would appear that the "facial regeneration" comes within Section 7321(c) of the Business and Professions Code. Accordingly, unless you are a licensed cosmetician under the provisions of Chapter 10 of the Business and Professions Code (sections 7300 et seq.), it would be unlawful for you to engage in the business of facial regeneration by the means contemplated.

Any form of analgesia, sedation or anesthesia by an injectable substance is the practice of medicine and may not be done by any person who does not hold a valid certificate to practice medicine in the State of California. Depending on the circumstances, such violation may be punishable as a misdemeanor or felony as provided in Business and Professions Code sections 2141 and 2141.5.

You should also be aware that if the substance used contains phenol (carbolic acid) in excess of 10% in solution, or corrosive sublimate (mercury) in a solution greater than 1 in 500, there would be a violation of Business and Professions Code section 7415, punishable as a misdemeanor

I hope the foregoing information will be helpful in conforming your course of action to the legal requirements involved.

Very truly yours,

EVELLE J. YOUNGER
District Attorney

By
WILLIAM L. RITZI
Assistant District Attorney

tw

State of California — Department of Professional and Vocational Standards

Memorandum

To Mr. Wallace W. Thompson
Executive Secretary
Board of Medical Examiners

Date May 19, 1969

File No.:

From : Administrative Adviser's Office

Subject: Inquiry of Wyn Rummler re Facial Rejuvenation

You have asked our advice regarding certain inquiries from Mr. Wyn Rummler of Los Angeles pertaining to a proposed plan for facial rejuvenation. By letter received April 15, 1969, Mr. Rummler encloses a copy of a letter from the District Attorney of Los Angeles County concluding that the treatment involved constitutes an act of cosmetology, and would constitute the practice of medicine if accompanied by an injection of sedative.

Under the factual situation presented, the client would be examined by a physician and surgeon specializing in dermatology, who would administer an injection of sedative. Mr. Rummler would then apply to the client's face a solution of phenol (not greater than 10%) and apply a tape mask for 48 hours. Thereafter he would apply thymol iodide powder, which would remain on the client's face about 9 days. The treatment would take place "in facilities as specified by law" and the client would be given minor medication in pill form prescribed by the physician during his confinement. The client would be billed separately by the doctor, but Mr. Rummler's part of the treatment would be sold through sales agents working on commission, and would be represented by a written contract. The sales agents would refer the clients to the physician involved.

The proposed plan presents a number of indicated violations of law. In the following discussion of these problems, all section references are to the Business and Professions Code, unless otherwise specified.

Facial rejuvenation, including rejuvenation through the application of a phenol solution, constitutes the practice of cosmetology, and may not be practiced by an unlicensed person (People vs. Penney, 44 C.2d 861, 285 P.2d 926, @930; Sections 7321, 7325). Any powders or ointments applied to the face of the client could constitute the unlawful practice of medicine, depending upon the constituents involved (Sections 2013, 2137 and 2141). We do not know what is meant by "facilities as specified by law", but presumably the premises where the

APPENDIX "E"

rejuvenation occurs would constitute a cosmetological establishment which would have to be licensed by the State Board of Cosmetology and meet all sanitary regulations established by the board (Sections 7380 - 7385); and conceivably such premises might require a license from the Department of Public Health (Sections 1400-1401.5, Health and Safety Code).

If the sales agents participated in any part of the doctor's fee, an unlawful rebate or commission would be indicated (Section 650). Informing prospective clients of the doctor's fee also could constitute a violation of Section 651.3, which prohibits, among others, physicians and surgeons from directly or indirectly advertising fees. Furthermore, the employment by a physician and surgeon of "cappers", "steerers" or other persons in procuring practice constitutes unprofessional conduct (Section 2399).

If Mr. Rummler were to engage and pay the doctor himself, under the foregoing circumstances, he would appear to be engaging in the unlawful practice of medicine under the principles set forth in Pacific Employers Ins. Co. vs. Carpenter, 10 Cal.App.2d 592, 52 P.2d 992 @ 993; and in State Board of Medical Examiners vs. Pacific Health Corporation, Inc., 12 Cal.2d 156, 82 P.2d 429 @ 430; and the doctor he employs would be subject to disciplinary action for unprofessional conduct in assisting in or abetting the violation (Section 2378).

In the event Mr. Rummler were to require prospective clients to obtain clearance from a dermatologist prior to the facial, referring the client to the physician and quoting a fee, a question of fact would arise as to whether violations of Sections 651.3 and 2399 were involved. We do not believe these problems would be eliminated merely because Mr. Rummler himself paid the doctor's fee.

With regard to Mr. Rummler's inquiry as to the basis on which the Legislature arrived at the concentration of phenol specified in Section 7415, we are informed that solutions of phenol greater than 10% can cause first degree burns and are considered more toxic, whereas solutions of 10% or less are considered less dangerous. We are not aware, however, of the specific evidence that may have been presented to the Legislature in this respect.

Please let us know if further assistance is desired.

W. S. ANDRUS
Chief Counsel

James L. Hamman

JLH:lo

By JAMES L. HAMMAN
Associate Counsel

APPENDIX "F"

STATE OF CALIFORNIA—DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS — RONALD REAGAN, Governor

BOARD OF COSMETOLOGY
1020 N STREET, ROOM 591
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: 916—445-7061

December 23, 1969

Mr. Wyn Rummler
1522 No. Mariposa
Los Angeles, California 90027

Dear Mr. Rummler:

Your letter of November 11, 1969, with its enclosures, has now been reviewed by our legal staff, and they are of the opinion that facial rejuvenation by means of applying solutions containing phenol constitutes the practice of cosmetology, and may only be performed by licensed persons in licensed establishments.

They point out that although the case of Whitcomb vs. Emerson (46 C.A.2d 263, 115 P.2d 892, holding that a person who practices facial massage only may not be compelled to be examined and licensed in all phases of cosmetology) has never been reversed and still appears to represent the law to that extent, yet its holding has never been extended beyond facial massage. In fact, in a more recent case, People vs. Penney, 44 C.2d 861, 285 P.2d 926 @ 930, the practice of facial rejuvenation by application of phenol solutions was held to constitute the practice of cosmetology. Consequently, our legal staff believes that facial rejuvenation by application of phenol solutions may only be performed by licensed cosmetologists in licensed establishments (Section 7325, Business and Professions Code.)

Since we do not give a separate examination or license for facial rejuvenation only, it is our opinion that you must qualify for and pass the examination for a cosmetologist license if you desire to engage in this type of operation. The requirements for qualification are set forth in Section 7332 of the above-mentioned code. (A copy of which is enclosed)

We regret that we are unable to provide you with any further history of or medical authority for Section 7415, which limits phenol solutions applied by licensees to ten percent, beyond that set forth in James L. Hamman's memorandum of May 19, 1969 to the Executive Secretary of the Board of Medical Examiners, a copy of which you have received. According to our legal advisers, it is the board's responsibility to administer the law as it is written until such time as the Legislature sees fit to amend the law.

Very truly yours,

Harold V. Halverson

Harold V. Halverson
Assistant Secretary

HVH:aa
enc.

CLAIRE JONES, President
SYLVIA Le SAGE
STEVE COURSO
NORINE R. HEIDER
ANTONIO VAZZOLER
DONALD H. OLIPHANT, SR.
DONALD YAMAMOTO
JAMES B. MARGETTS, Executive Secretary

APPENDIX "G"

NONA'S YOUTH FOUNT 10822 Ventura Boulevard North Hollywood, California 769-5736

FACIAL REJUVENATION AGREEMENT

Date: 9-11 19 70

Client: DORTHY FLIEGEL
Address: 1111 N. LARABEE Phone: OL-7-5392

Nona's Youth Fount agrees to perform a facial rejuvenation AND NECK treatment on the above named client on the following conditions:

Treatment scheduled to begin on 9-11, 1970. Should this date prove inconvenient for the client it may be changed to a more suitable time on 10 days notice without loss of deposit.

Client undertakes to obtain, on his own responsibility, a medical examination within seven days before treatment and to furnish Nona's Youth Fount with a written report by the examining physician.

Should said report indicate that the client's health is below normal, this agreement is cancelled and any deposit by client to Nona's Youth Fount is to be refunded immediately.

This contract includes 12 days of care in facilities at 10822 Ventura Boulevard, North Hollywood, California, and all expenses of treatment except the cost of said medical examination.

IMPORTANT(Client will please read carefully): This treatment causes the growth of new skin through application to the face of a solution which dissolves the existing epidermis. The dissolvent contains chemicals which can be poisonous if used under improper conditions.

This treatment can be dangerous for anyone whose health is poor, particularly for anyone who has diabetic, cardiac, kidney or nervous problems, or who has been using narcotics. Persons with allergies, or with abnormal skin, particularly persons with keloid tendencies, can be scarred or otherwise harmed by this treatment. (One indication of keloid tendencies is excessive or unusual scarring from minor cuts.)

Nona's Youth Fount does not undertake medical diagnosis of any kind, and with respect to the above listed hazards this treatment is undertaken at the client's own risk. In all other respects, Nona's Youth Fount has full responsibility for this treatment, and for performing it with skill, care and discretion.

Price 1170.00
Deposit 800.00
Balance of 370.00 due ~~before beginning treatment~~ IN 4 MONTHLY PAYMENTS OF $75.00 BEGINNING OCTOBER 15, 1970 AND FINAL PAYMENT OF $70.00 ON MARCH 15, 1971

NONA'S YOUTH FOUNT
by Nona Viker Client's signature Dorthy Fliegel

APPENDIX "H"

Face rejuvenation through the application of a solution of phenol is the practice of cosmetology.

People v Penny (1955) 44 C 2d 861 4

it may or may not be depending on what else if anything, is used

Given ___/___

Refused _____

Leslie W. Light

Honorable Leslie W. Light
Judge of the Superior Court

-4-

APPENDIX "I"

"Before"

preliminary hearing.

MR. CARSTAIRS: That's what it is, your Honor.

Is this what you want, sir?

MR. RUMMLER: Correct.

THE COURT: All right. We will mark that Defendant's A for identification for this proceeding. It looks like an 8 by 10 glossy print photo of the witness.

Q BY MR. RUMMLER: Mrs. Fleigel, at the time you were inquiring about this treatment, did you have any skin conditions that you hoped would be improved or corrected by this treatment?

A I did.

Q Will you describe them, please?

A (No response.)

Q Will you describe the conditions you had which you thought this treatment would correct?

A My forehead. And under my neck.

And, of course, wrinkles and whatever else was there.

MR. RUMMLER: May the record reflect that the witness pointed to her forehead along the hairline.

THE WITNESS: That's right.

THE COURT: Yes. She made a horizontal gesture with her left hand across the upper part of her forehead from the right side to the left.

Q BY MR. RUMMLER: I will now show you a photograph --

THE COURT: It is Defendant's Exhibit A.

Q BY MR. RUMMLER: Defendant's Exhibit A. And ask

you if this appears to be the one that was taken at Branko Studios?

A (No response.)

MR. RUMMLER: Mr. Carstairs?

MR. CARSTAIRS: I have seen it. Thank you.

THE WITNESS: That's right.

THE COURT: That photograph was taken before these things that you say were done to you at Nona's Youth Fount took place?

THE WITNESS: Yes, sir.

THE COURT: Do you want that received in evidence?

#16 MR. RUMMLER: Yes. I would like that exhibit, A, to be received in evidence.

THE COURT: All right. It will be received.

And at this time it may be shown to the jury for such relevancy as they may find it to have to the issues in this case.

I'd like them to be able to see the photo while they can also look at the witness. So, show them, give them that photo and let them pass it down the line.

As I indicated earlier, ladies and gentlemen, we are not concerned with whether Mrs. Fleigel got a good or bad treatment, assuming she got one. But, if you find that she did get one, the question is whether it was something which the law prohibits being done except by persons possessing certain types of licenses.

You may find from the photograph, which is in evidence, as well as looking at this witness, that there is

some evidence that something did take place. As to what did take place, that you may determine on the basis of all the evidence in this case.

(Brief pause in the proceedings.)

THE COURT: Has every juror and alternate seen the photo?

All right. You may proceed, Mr. Rummler.

Pardon me. Mr. Bailiff, would you pick up that exhibit, please?

THE BAILIFF: Yes, your Honor.

Q BY MR. RUMMLER: Mrs. Fleigel, you indicated that one of the conditions that you hoped this treatment would correct was a sort of a problem with your chin. Chin line. Would that be a type of a rope-like scar at the base of the chin?

A Not only that. My whole face.

Q Yes.

A I was told that my whole face would look entirely different. I would look twenty-five years younger.

Q And you were told that this rope-like scar at the base of the chin would be removed or --

A Everything. Everything. Whatever was wrong, whether they were wrinkles or -- anything, if there was skin blemishes like acne, or anything, which I didn't have, but -- but, this is the result that I got. My eyes and --

Q Now, you say you have an inflamed condition in the eyes?

A Yes.

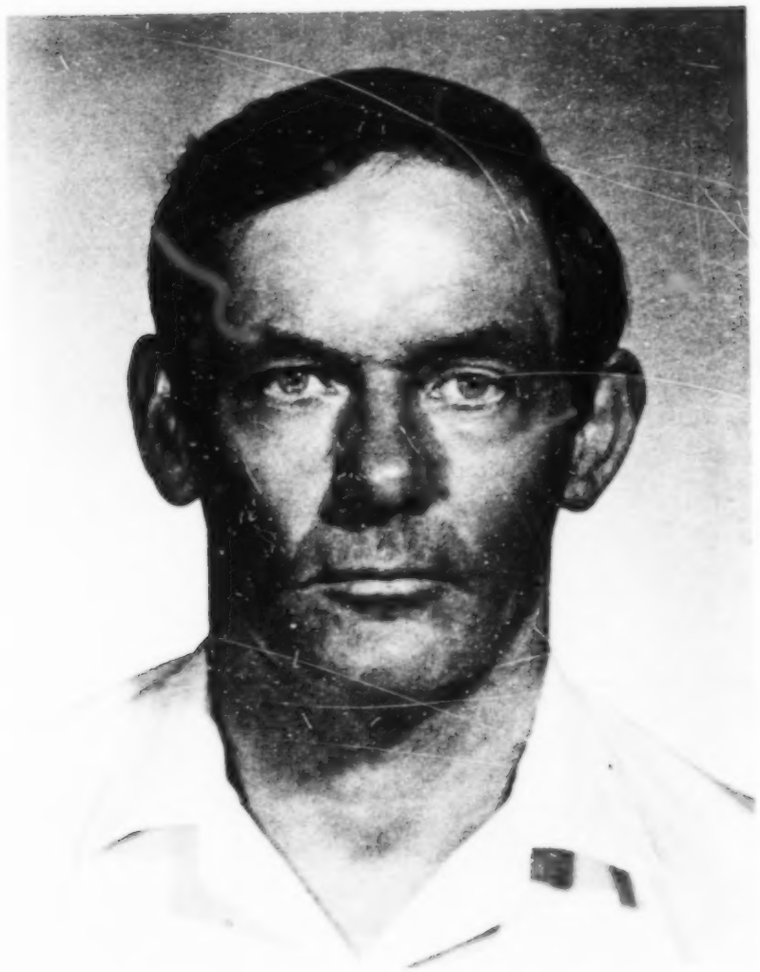
APPENDIX "J"

"Before"

"After"

APPENDIX "K"

"Before"



"After"

APPENDIX "L"

J. L. KAVANAGH
CHIEF DEPUTY

DEPUTIES
JOSEPH M. ROGERS
KEITH M. HAWKES
REMO C. MATTEOLI
MARK F. THOMPSON
SAN FRANCISCO

ROBERT F. JOHNSON
R. D. BARROW
LOS ANGELES

A. F. BRADOVICH
SACRAMENTO

OFFICE OF THE CLERK

Supreme Court of California

SAN FRANCISCO, CALIFORNIA

G. E. BISHEL, CLERK

OFFICES
SAN FRANCISCO 94102
4250 STATE BUILDING
LOS ANGELES 90012
1209 STATE BUILDING
SACRAMENTO 95814
109 LIBRARY AND COURTS BUILDING

February 24, 1975

Wyn Rummler, Esq.
1522 North Mariposa Avenue
Los Angeles, California 90027

Re: 2 Crim. 24878 - People v. Rummler

Dear Mr. Rummler:

Your "Statement of Objection to Supreme Court Justices for Cause" has been transmitted to this court for consideration. The court will consider your statement in conjunction with any petition for hearing that may be filed.

Very truly yours,

G. E. BISHEL
Clerk of the Supreme Court

J. L. Kavanagh

By: J. L. Kavanagh
Chief Deputy

JLK:ct

cc: Attorney General
Reg.

APPENDIX "M"

A No.

Q How far from the floor do they start?

A I would say --

Q You can indicate on your person, if you can.

A Oh, about to here; about to the knee, I would say.

Q About 18 inches?

A About 18 inches.

Q You say they are made of wood. Is it painted wood?

A Yes. The wood has been painted.

Q When you first observed Mr. Diaz and someone else, Mr. Diaz in compartment three and someone else in number two, what did you observe; of what part of the body did you observe of the individuals?

A I observed from the knee down; maybe not quite the knee.

Q And I imagine you saw legs; how many legs?

A I seen four legs.

Q Had you noted anyone going into the rest room other than Mr. Diaz and Mr. Calderon?

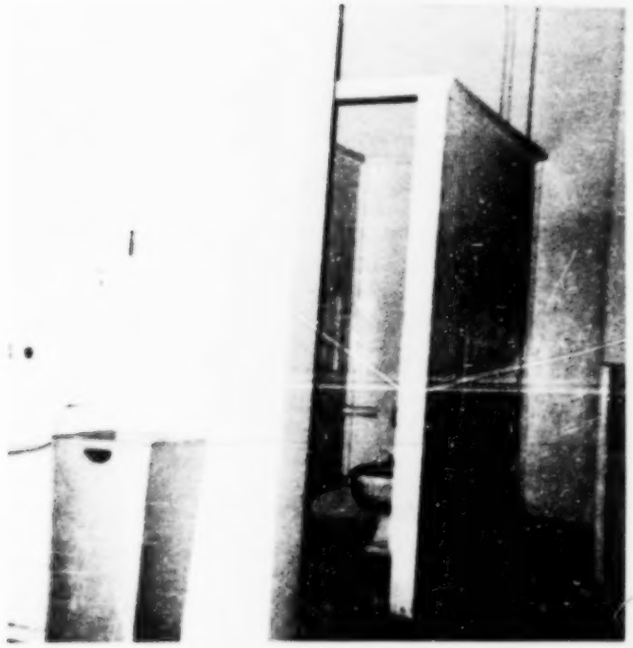
A No one other than my partner.

Q And your partner, was he in either commode number two or three?

A No.

Q Was he next to you when you made this

APPENDIX "N"



APPENDIX "O"

APPENDIX "P"

LOS ANGELES POLICE DEPARTMENT

EDWARD M. DAVIS
Chief of Police

SAM YORTY
Mayor

Mailing Address: Box 30158
Los Angeles, Calif. 90030

June 1, 1973

Mr. Wyn Rummler
1522 North Mariposa Avenue
Los Angeles, California

Dear Mr. Rummler:

Our investigation disclosed that Mrs. Dorothy Fleigel has not applied for a U. S. visa or passport within the last year at the Los Angeles office.

However, as you know from the telephone conversation with our investigator, she may have had a prior passport and you must contact the Washington, D.C., office to obtain that information. Further investigation disclosed that there is no immigration record on Mrs. Fleigel and she is apparently a U.S. citizen.

If we can be of assistance to you in the future, please do not hesitate to contact us.

Very truly yours,

E. M. DAVIS
Chief of Police

R. A. SALLS, Lieutenant
Acting Commanding Officer
Hollywood Investigative Division

RAS:jwp:kss

APPENDIX "Q"

In Reply, Please Refer to File No.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
11000 Wilshire Boulevard
Los Angeles, California 90024

May 21, 1973

Mr. Wyn Rummler
1522 North Mariposa Avenue
Los Angeles, California 90027

Dear Mr. Rummler:

Reference is made to your letter of May 12, 1973.

This is to advise you that the issuance of passports and records thereof are handled by the United States State Department.

It is suggested that you forward your request to that organization for whatever assistance the requirements and rules of their organization permit.

Very truly yours,

Joe D. Jamieson
JOE D. JAMIESON
Assistant Director in Charge

1 cc: Mr. Hibbard Lamkin
Special Agent in Charge
U. S. Department of State
300 North Los Angeles
Los Angeles, California 90012

APPENDIX "R"

DEPARTMENT OF STATE

Washington, D.C. 20520

IN REPLY REFER TO:
PPT/LE - FLEIGEL, Dorothy

MAY 17 1973

Mr. Wyn Rummler
1522 N. Mariposa Avenue
Los Angeles, California 90027

Dear Mr. Rummler:

We regret that we cannot give you a favorable reply to your request.

A check of our files in the name of Dorothy Fleigel does not disclose a record of an application for subject.

Sincerely,

W.E. Duggan

W. E. Duggan
Chief, Legal Division
Passport Office

APPENDIX "S"

Transfer to Dept 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES — DEPT 118

Date: January 11, 1974
HONORABLE: LESLIE W. LIGHT, JUDGE
M. Woods, Deputy Sheriff
T. Gonzalez, Deputy Clerk
B. Irvin, Reporter
(Parties and counsel checked if present)

A 122 256 — People vs.

Counsel for Plaintiff: DDAs: N. Montrose

02. RUMMLER, Wyn

Counsel for Defendant

2141.5 B&P

Entered: 1-11-74

NATURE OF PROCEEDINGS

Dorothy Flaegel aka Dorothy Ross appears with DDA, Norman Montrose. On motion by the people, Court orders the County Clerk to release people's exhibit 3 (blue velvet jewelry box and contents) to Dorothy Flaegel aka Dorothy Ross.

The above mentioned exhibit is released to Dorothy Flaegel aka Dorothy Ross under the express conditions that Dorothy Flaegel aka Dorothy Ross not hypothecate or alienate said exhibit or any part thereof by way of pledge, incumbrance, sale, loan, transferance of possession to another for any purpose or in any way alter or change said item without the prior approval of this Court until such time as this case becomes final on appeal. Dorothy Flaegel aka Dorothy Ross expressly states that she will comply with said conditions.

Defendant not appearing this date.

Exhibit # 3
Date 1/11/74
Time 1:53 PM
Deputy Clerk
Received by

Dept 118

APPENDIX "T"

SENATE BILL **No. 513**

Introduced by Senator Moscone

February 27, 1975

An act to amend Section 12912 of the Education Code, and to amend Sections 290, 647, 11107, and 11112 of the Penal Code, relating to lewd conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 513, as introduced, Moscone. Lewd conduct.

Existing law makes it a misdemeanor (1) to solicit or engage in lewd or dissolute conduct in a public place or place open to public or exposed to public view, (2) or to loiter in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or unlawful act. This bill would repeal both such provisions and make related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12912 of the Education Code is amended to read:

12912. "Sex offense" as used in Sections 13175, 13207, 13220.16, 13218, 13255, and 13586 means any one or more of the offenses listed below:

(a) Any offense defined in Sections 266, 267, 285, 286, 288, 288a, 647a, *or* subdivision 3 or 4 of Section 261 ; ~~or subdivision (a) or (d) of Section 647~~ of the Penal Code.

(b) Any offense defined ~~in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined~~ in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 if the offense defined in such sections was committed prior

this section who shall violate any of the provisions thereof is guilty of a misdemeanor.

The statements, photographs and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

SEC. 4. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) ~~Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.~~

~~(b)~~ Who solicits or who engages in any act of prostitution. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

~~(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.~~

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer so to do, if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, toluene, any substance defined as a poison in Schedule D of Section 4160 of the Business and Professions Code, or any combination of any intoxicating liquor, drug, toluene, or any such poison, in such a condition that he is unable to exercise care for his own safety or the safety of others, or by reason of his being under the influence of intoxicating liquor, any drug, toluene, any substance defined as a poison in Schedule D of Section 4160 of the Business and

APPENDIX "U"

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
JOHN H. LARSON, County Counsel
JOHN J. WAGNER, Deputy County Counsel
606 Hall of Administration
Los Angeles, California 90012
(213) 974-1816

ATTORNEY(S) FOR Plaintiff and Respondent

DUPLICATE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

BOARD OF EDUCATION OF THE EL MONTE SCHOOL DISTRICT OF LOS ANGELES COUNTY,

PLAINTIFF(S)

vs

MARCUS MORALES CALDERON,

DEFENDANT(S)

CASE NUMBER

NEC 10832

MEMORANDUM OF COSTS ON APPEAL

CLAIMED BY PLAINTIFF and RESPONDENT

AGAINST DEFENDANT and APPELLANT

1.	Filing fees	$
2.	Preparation of record on appeal	$
3.	Printing of briefs	$ 52.40
4.	Production of additional evidence	$
5.	Notary fees	$
	a.	$
	b.	$
	c.	$
	d.	$
6.	Expenses of service	$
	a.	$
	b.	$
	c.	$
	d.	$
7.	Transmission and filing of record, briefs, and other papers	$
	Total	$ 52.40
	Costs taxed by order of Court	$

STATE OF CALIFORNIA, County of Los Angeles

I am xx one of the attorneys of the party who claims costs herein; to the best of my knowledge and belief the items in the within memorandum of costs on appeal are correct; and that said costs have been necessarily incurred.

Dated: February 25, 1974 At Los Angeles, California.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

/s/ John J. Wagner

JOHN J. WAGNER (Signature)

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
JOHN H. LARSON, County Counsel
JOHN J. WAGNER, Deputy County Counsel
606 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1816

ATTORNEY(S) FOR Defendant and Respondent.

ORIGINAL

FILED
MAY 28 1974
CLARENCE E. CADELL, County Clerk
A. Jackson
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

MARCUS MORALES CALDERON,

Plaintiff and Appellant,

vs

BOARD OF EDUCATION OF THE EL MONTE SCHOOL DISTRICT OF LOS ANGELES COUNTY,

Defendant and Respondent.

CASE NUMBER

C 6214

No R.

MEMORANDUM OF COSTS ON APPEAL

CLAIMED BY DEFENDANT AND RESPONDENT

AGAINST PLAINTIFF AND APPELLANT

1.	Filing fees	$
2.	Preparation of record on appeal	$
3.	Printing of briefs	$ 35.35
4.	Production of additional evidence	$
5.	Notary fees	$
	a.	$
	b.	$
	c.	$
	d.	$
6.	Expenses of service	$
	a.	$
	b.	$
	c.	$
	d.	$
7.	Transmission and filing of record, briefs, and other papers	$
	Total	$ 35.35
	Costs taxed by order of Court	$

STATE OF CALIFORNIA, County of Los Angeles

I am one of the attorneys who claims costs herein; to the best of my knowledge and belief the items in the within memorandum of costs on appeal are correct; and that said costs have been necessarily incurred.

Dated: May 28, 1974 At Los Angeles, California.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

John J. Wagner

JOHN J. WAGNER (Signature)

GEORGE E. COWGILL
FOREMAN PRO-TEM

JESSE L. ROBINSON
FOREMAN

MRS. ELIZABETH M. DITHRIDGE
SECRETARY

MRS. ARIKO ABE
MISS R. PRISCILLA BEATTIE
IRA L. BECK
MRS. BERTHA BLOOM
GEORGE E. COWGILL
PAUL B. CRAMER
MRS. ELIZABETH M. DITHRIDGE
LAWRENCE GREENER
MRS. ROSE S. HACKMAN
SHERMAN B. HUDNELL
MRS. AUDREY M. IRMAS
DONALD F. ISAACSON

COUNTY OF LOS ANGELES
1974-75 GRAND JURY
13-303 CRIMINAL COURTS BUILDING
LOS ANGELES, CALIF. 90012
974-3993

MRS. ELEANOR LEVINE
MRS. NANCY H. MANELLA
ELMER H. MEYER
MRS. MONICA C. MICCICHE
JOHN D. MYERS
GLENN W. REEDER
JESSE L. ROBINSON
CARL RODGERS
THOMAS L. SANDERS
MRS. DOROTHY A. SHERRETT
MRS. JACQUELYN F. WILSON

January 22, 1975

Mr. Wyn Rummler
1552 N. Mariposa Avenue
Los Angeles, California 90027

Dear Mr. Rummler:

Your letter of January 3, 1975 addressed to Mr. Robinson, requesting a Grand Jury investigation, has been referred to this committee. With the assistance of our legal advisor we have reviewed your complaint and the attached material.

The matter of the actual costs of legal briefs which a court ordered Mr. Calderon to pay in the amounts of $52.40 and $35.35 is a judicial decision which the Grand Jury has no jurisdiction to review.

Furthermore, the fact that you are not able to discover the basis for the amounts of the claims does not in itself indicate that the claims are false or that any crime has been committed.

Therefore, the matter appears to be a civil dispute which, as you know, is not a proper concern of the Grand Jury.

Sincerely,

Nancy Manella

Nancy Manella, Chairman,
Criminal Complaints Committee

js

EXHIBIT "M"

APPENDIX "V"

3	**RIGHT TO ASSISTANCE OF COUNSEL. Legislative Constitutional Amendment.** Amends Constitution to provide that a defendant has the right to have the assistance of counsel in any criminal prosecution. Deletes provision giving defendant the right to defend himself without counsel and authorizes Legislature to require a defendant in a felony case to have the assistance of counsel.	YES	
		NO	

(For full text of measure, see page 4, Part II)

General Analysis by the Legislative Counsel

A "Yes" vote on this measure is a vote to: (1) Eliminate from the California Constitution the provision giving a defendant in a criminal prosecution the right to defend himself in person; (2) Restate the provisions giving the accused the right to assistance of counsel and the right to be personally present with counsel; and (3) Authorize the Legislature to require that a defendant in a felony case have assistance of counsel.

A "No" vote is a vote to retain the constitutional provision giving the defendant in a criminal prosecution the right to appear and defend himself in person.

For further details, see below.